

EXHIBIT A

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION**

PHI THETA KAPPA HONOR SOCIETY,)	
)	
Plaintiff/Counter-Defendant)	Civil Action No. 3:22-cv-00208-CWR-
)	RPM
v.)	
)	
HONORSOCIETY.ORG, INC.,)	
)	
Defendant/Counter-Plaintiff)	
/Third-Party-Plaintiff)	
)	
HONOR SOCIETY FOUNDATION, INC.,)	
)	
Defendant)	
)	
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)	
HONORSOCIETY.ORG, INC.,)	
)	
Defendant/Counter-Plaintiff)	
/Third-Party-Plaintiff)	
)	
v.)	
)	
DR. LYNN TINCHER-LADNER,)	
)	
Third-Party Defendant)	

DECLARATION OF JONATHAN G. POLAK

I, Jonathan G. Polak, declare as follows:

1. I am over the age of eighteen and competent to testify to the matters in this declaration. I have personal knowledge and access to information on the matters discussed in this declaration, as counsel of record for the Plaintiff/Counter-Defendant Phi Theta Kappa Honor Society (“PTK”) and Third-Party Defendant Dr. Lynn Tincher-Ladner in this lawsuit. My

declaration is based on my personal knowledge and investigation into the information and documents discussed in this declaration.

A. The Procedural History Demonstrates Honor Society's Bad Faith.

2. In early March 2024, Honor Society launched a malicious campaign against PTK. Honor Society harassed PTK's partner colleges with 280+ records requests originating from a disguised email address and subject line appearing to associate with PTK. Honor Society also sent malicious, misleading, PTK-related survey questions to 450,000+ recipients, including community college students in PTK's market, to tarnish PTK's reputation.

3. PTK investigated Honor Society's conduct related to the surveys and the records request. PTK's counsel then contacted Honor Society's counsel seeking to have Honor Society cease sending the surveys and records requests to avoid the need for Court intervention. After failed discussions, PTK was forced to prepare and file a motion seeking injunctive relief from the deceptive records requests and malicious survey along with an amended complaint, and a motion for expedited discovery into the conduct, with each having supporting briefs, declarations, replies, and numerous exhibits. *See, e.g.*, ECF Nos. 112, 112-4, 114, 113, 115, 116, 117, 124, 125, 126 and 126-1. PTK's attorney's fees in connection with this legal work detailed in Ex. A-1 attached hereto, the contents of which are described in more detail below.

4. On March 27, 2024, the Court held an in-person evidentiary hearing on PTK's motion for injunctive relief and related filings. Ex. A-2 attached hereto is a true and accurate copy of the Evidentiary Hearing Transcript dated March 27, 2024. As shown in the transcript, in the first injunction hearing, Honor Society's out-of-state counsel stated, "Honor Society sent a onetime survey out . . . It doesn't need to send the survey again" and "the survey was a onetime deal . . . They received the results from that survey; they are done." Ex. A-2 at 98:22-100:22. Michael

Moradian, Honor Society's Executive Director, sat at his counsel's table when that representation was made and offered no objection or correction.

5. On March 28, 2024, the Court issued an Order granting PTK injunctive relief and admonishing Honor Society's malicious and deceptive conduct. ECF No. 130. The Order also permitted PTK to file an amended complaint to add its claims of tortious interference. *Id.* The Order also permitted PTK to conduct discovery in accordance with the existing discovery schedule. *Id.* As a part of that discovery, PTK deposed Moradian, who testified he disagreed with the Order and that Judge Reeves was "misinformed" and did not have "the chance to have a truly objective analysis." *See* Ex. A-3, 5/3/2024 Moradian Dep. Tr. at 47:1-63:22 and 212:18-22, a true and accurate copy of which is attached hereto.

6. As part of that discovery, PTK also deposed David Asari, the same individual who laundered the records requests through a personal email account. Asari testified that the voluminous March records requests were issued to "get an idea of if PTK's claims of 10 percent were – being in the top 10 percent were correct" and "if those claims were correct." Ex. A-14, 5/2/24 Asari Dep. Tr. at 227:19-228:14. In other words, the records requests were used to collect information as evidence in this litigation.

7. In May 2024, Honor Society expanded its malicious attack on PTK. This time Honor Society reframed the allegations of its now-enjoined survey questions as alleged facts and published the maligning, misleading material across the Internet for all to see. Specifically, Moradian created approximately 5,000 AI-generated webpages and related publications maligning PTK by publishing false, misleading, deceptive, malicious material intended to destroy the reputations of PTK and its CEO, Dr. Tincher-Ladner. While the webpages parroted Honor Society's counterclaims in the litigation, they did so in misleading ways. For example, they failed

to state that author was a not neutral party, and was in fact the counterclaimant in the litigation, used racist tropes in the illustrations and otherwise falsely suggested PTK's and Dr. Tinchler-Ladner's association with embezzlement and sexual harassment allegations. Honor Society linked the maligning webpages to its websites, social media accounts, and other websites owned by Moradian.

8. PTK was forced to spend extensive time and effort investigating both the vast volumes of material published by Honor Society and the damage to PTK. The investigation was complex because Honor Society cross-linked its 5,000 webpages to its website and the websites and social media accounts of Moradian's other companies as well. Not to mention, throughout the rapid investigation, Honor Society edited the webpages and constantly created new ones. The number of pages grew in just days from hundreds to thousands and at its height totaled approximately 5,000 malicious webpages. Again, PTK contacted Honor Society's counsel seeking to have Honor Society take down the malicious publications to avoid the need for Court intervention. And again, after failed discussions, PTK was forced to prepare and file a second motion seeking injunctive relief from the 5,000 maligning, bad-faith publications with a supporting, brief, declarations, and reply, each having many exhibits. *See, e.g.*, ECF Nos. 220, 221, 221-1, 221-48, 231-1, 231. PTK and its counsel moved at a grueling pace to investigate Honor Society's mass-publications and prepare its motion and supporting papers. Its goal was to obtain relief as fast as possible to stop the harm that 5,000 malicious webpages tied to each of its community colleges had already caused it. PTK's attorney's fees incurred in connection with this legal work are detailed in Ex. A-4 attached hereto, the contents of which are described in more detail below.

9. PTK was confident that its papers (including Dr. Tincher-Ladner's declarations and 60+ exhibits detailing Honor Society's conduct and PTK's damages) would provide the Court the information it needed to reach its decision. That said, over PTK's objection, Honor Society requested a full in-person evidentiary hearing with live witness testimony from Mr. Moradian and Dr. Tincher-Ladner. The in-person hearing lasted two-full days. Ex. A-5 attached hereto is a true and accurate copy of the Evidentiary Hearing Transcript (Volumes 1 and 2) dated July 12, 2024 and July 17, 2024.

10. While waiting for the Court to rule on the pending (second) motion for injunctive relief, on August 19, 2024, PTK brought to Honor Society's attention that Honor Society's survey, which was the subject of the first preliminary injunction proceedings, was still in use, albeit without the six questions called out in the Court's First Preliminary Injunction Order. PTK asked for an explanation for why the Court was told in March that the survey was no longer being used, but it was still in use months later. Ex. A-6 attached hereto is a true and accurate copy of PTK's correspondence to Honor Society dated August 19, 2024.

11. Honor Society's out-of-state counsel responded that it was some "other survey" that was now in use. Honor Society's out-of-state counsel also stated, "At no point did either HonorSociety or I represent to the Court that HonorSociety would not send other surveys or other survey questions." This response avoided the question, but the clear intent was to state the survey at issue was "new" and thus different from the old survey. But in a deposition taken of Moradian on October 1, 2024, he clearly stated that this survey referenced in his out-of-state counsel's letter was the "same" survey as was the subject of the injunction (just without the six questions at issue). Ex. A-7 attached hereto is a true and accurate copy of Honor Society's response to PTK dated August 30, 2024. This is important not only for the misrepresentations of out-of-state counsel but

also to show that survey language still had negative questions about PTK intended to elicit only negative responses, or to suggest that only negative responses would be true. (For example, one question continuing to be fielded read: “Please elaborate on why you are dissatisfied with PTK. The truth is important and your opinion matters!”).

12. On August 22, 2024, the Court issued an Order granting PTK injunctive relief and strongly admonished Honor Society for its bad-faith conduct. *See* ECF No. 230. The Order expressly identifies Honor Society’s conduct, which it found to be misleading. Honor Society was ordered to subject itself to discovery to determine whether it was responsible for edits to PTK’s Wikipedia page that the Court said “suggest an intentional scheme to delete favorable content about PTK and introduce unfavorable content about PTK, rather than speak the truth.” *See* ECF No. 230 at 10. In the Order, the Court invited PTK to seek its fees after its Wikipedia discovery. Specifically, the Court recognized its “inherent power to assess attorney’s fees,” for example “when a party has acted in bad faith, vexatiously, wantonly, or for oppressive reasons,” and it “believes that standard has been met as to certain online posts.” *See* ECF No. 230 at 24.

13. Even still, Honor Society failed to comply with the Second Preliminary Injunction Order. PTK spent extensive time and effort investigating the thousands of publications that failed to comply with the Order. In some cases, Honor Society made no attempt at to comply with the Order. For example, its PTK Lawsuit support webpages lacked disclaimers entirely. In other instances, Honor Society complied with the express language of the Order but deliberately violated its spirit. For example, most of Honor Society’s disclaimers were smaller than required 12-point font. Most egregiously, Honor Society also enlarged the surrounding text to further the very confusion the disclaimer was intended to dispel. Where Honor Society did comply with the Order, it did so only because of PTK’s efforts to force compliance.

14. PTK wrote Honor Society's counsel demanding Honor Society comply with Order. Honor Society's out-of-state counsel wrote back denying any wrongdoing. Through that correspondence and Moradian's declaration after-the-fact, it became clear that Honor Society and its out-of-state counsel believed it was PTK's job to identify any failures of Honor Society to comply with the Court's Order, and that Honor Society's role in compliance with the Order was reactive, not proactive. PTK offered Honor Society the ability to avoid litigating the contempt issues by complying with the Order, but Honor Society rejected the offer, and PTK was forced to file its motion and supporting papers. *See* ECF Nos. 242, 242-1, 261-1, 243, 261. PTK's attorney's fees in connection with this legal work are detailed in Ex. A-8 attached hereto, the contents of which are described in more detail below.

15. PTK was forced to spend significant resources to defend itself and preserve its reputation in the face of Honor Society's smear campaign. Every aspect of this side-show, satellite litigation was Honor Society's doing, and at every turn Honor Society could have stood down, removed the offensive content, and avoided the costs incurred to date. At the relevant points, out-of-state counsel could have been truthful as to their intentions and the facts, but for whatever reason did not do so. As a result, PTK now moves for fees. PTK's attorney's fees in connection with this legal work are detailed in Ex. A-9 attached hereto, the contents of which are described in more detail below. PTK anticipates filing a reply in support of its motion for fees, for which it reserves the right to seek its fees.

B. The Rule 30(b)(6) Deposition Demonstrates Honor Society's Bad Faith.

16. After the Court's entry of its Second Preliminary Injunction Order, on August 22, the day of Order, and pursuant to the Court's instruction that it do so, PTK issued a Rule 30(b)(6) Deposition Notice to Honor Society. The Notice listed three discrete topics, each of which was

related to the revisions to PTK's Wikipedia entry. A true and accurate copy of the 30(b)(6) Deposition Notice served on Honor Society on August 22, 2024, is attached hereto as Ex. A-10.

17. Honor Society only produced objections and declined to produce a witness at that time. Honor Society contended that PTK was only entitled to a single Rule 30(b)(6) deposition in the case, and so any deposition on the Wikipedia revisions must be addressed in that context and within the total time limitations of the rule. This was despite the Court's Order for Honor Society to "subject itself to discovery" on the matter so that PTK may report back quickly on the facts related to the Wikipedia revisions. *See* ECF No. 230 at 26. As a result, PTK raised this issue, among many others, in a discovery conference with Magistrate Judge Myers on September 28th. During this conference, Magistrate Judge Myers ordered Honor Society to produce a witness in response to PTK's Rule 30(b)(6) deposition notice, without prejudice to issuing a second notice on other issues in the case at a later time. Magistrate Judge Myers also expressly refused to limit the time for the deposition to anything less than the seven (7) hour limit, despite Honor Society's request to limit the deposition to only a few hours. PTK's objection to any reduced time limit was based on prior experience in deposing Moradian, his repeated non-responsiveness during those depositions, and his likely use of the "clock" to avoid answering all relevant questions. These concerns turned out to be well founded because during the October 1 Rule 30(b)(6) deposition, it became clear that had the deposition been limited to only a few hours, Moradian would have run out the clock without providing PTK with any substantive information.

18. Of course, PTK's intention was not to depose Mr. Moradian for the full time. In fact, it was expected the deposition (assuming a cooperative and responsive witness) would only take around two (2) hours. On October 1st, I deposed Honor Society via Zoom for approximately seven (7) hours. For this deposition, Honor Society designated Michael Moradian, its Executive

Director and Founder, as its corporate witness. A true and accurate copy of the 30(b)(6) Deposition Transcript of Honor Society conducted on October 1, 2024 is attached hereto as Ex. A-11.

19. PTK needed to use the entire seven hours due to Moradian's evasiveness, inconsistent testimony, and unwillingness to answer questions asked. This was Moradian's fourth deposition in this matter. In my opinion, Moradian's goal throughout the deposition was to intentionally not answer the questions being asked. To demonstrate this, I would point to his testimony, which was sometimes absurd and sometimes personal attacks towards me, but rarely responsive:

- "Well, the implication is mischaracterization, which is a perpetual habit of your legal style or maybe some would say chicanery . . ." Ex. A-11 at 9:4-6.
- "So I'm very familiar with the way you operate. And you know, the way I answer that question will be -- set up to be used against me either way and, you know, this is just the way that you frame your arguments." *Id.* at 51:17-21.
- "And I would say to Judge Reeves or any interested party that leaders can come from anywhere. Heros [sic] can come from anywhere. Just because you're litigated does not mean you cannot stand up for the rights of students and for the general public. Facts are facts and Wikipedia arbitrates and determines that and these are their determinations, not mine." *Id.* at 77:2-83:4
- "I'm sorry, I'm just trying my best to help you here, but what I would say is, like a broken record, you're bending the space time continuum." *Id.* at 158:23-25
- "I don't know if I'm qualified to answer that. I'm just one person contributing to Wikipedia. I'm not a Wikipediaian." *Id.* at 191:16-18.

20. In my decades of experience as a litigator, I have never been a part of a deposition where the witness was so abusive of the deposition process. Over *thirty* questions had to be repeated to Moradian, either by myself or the court reporter, based on his unwillingness to answer the question. For example, I had to ask Moradian *nine* times if he was the one responsible for removing Fred Haise's name from the PTK Wikipedia page, despite his obligation to prepare for this deposition, before he confirmed he was. *Id.* at 10:10-13:14. I also had to ask Moradian *eight*

times if he ever disclosed to any Wikipedia moderator that he was the executive director for Honor Society, before he confirmed he had not. Ex. A-11 at 69:15-72:15. Further, I had to ask Moradian *ten* times if he recalled the Court found Honor Society’s enjoined survey questions to be malicious before Moradian confirmed that he did. *Id.* at 77:9-80:8. It took *eleven* times for Moradian to respond as to whether he agreed with the Court’s ruling that there is no factual basis for referring to Robin Lowe as a PTK employee. *Id.* at 216:13-222:21. Including these questions and dozens of others, I noted over fifty instances when Moradian’s answers were non-responsive to my questions.

21. Despite claiming to be a great fan of Wikipedia for nearly twenty years, Moradian only recalled creating one account: WikiObjectivity. *Id.* at 38:5-11, 39:4-12, 74:21-75:22. This account was created on April 16th, mere weeks after the Court entered its First Preliminary Injunction Order and days after Honor Society filed its Second Amended Counterclaims. *Id.* And despite Moradian’s position that the account was meant to bring objectivity to the honor society space, he made more edits to PTK’s Wikipedia page than any other. He attempted to justify his edits because PTK’s account was “advertorial” in nature, which Moradian alleges is improper. *Id.* at 108:4-22, 113:5-117:4. For example, Moradian claimed that the history section on the page and PTK’s claim of an affiliation to Phi Beta Kappa were unfounded and advertorial, despite PTK producing a licensing agreement between the two honor societies in this case months ago. *Id.* at 73:19-24, 117:22-118:18, 119:3-22; *see also* Ex. A-12, PTK0132046, a true and accurate copy of which is attached hereto. He also claimed that the words “Phi Theta Kappa was born” is “advertorial” and somehow improper. Ex. A-11 at 116:2-20. He stated, “You know, the tone there is not an objective encyclopedic tone and somebody could, you know, take exception to an encyclopedia, you know, claiming, you know, this is the birth of Venus here. This is just -- this is not an appropriate tone for Wikipedia.” *Id.* at 117:9-16.

22. Moradian claimed that he was making these changes as the curator of the Honor Society museum, a function of the Honor Society Foundation. Ex. A-11 at 29:19-29:25.

23. Moradian confirmed he removed the majority of the “Notable members” from the article because he claimed he was unable to verify their membership. He said there was no corresponding reference footnote nor was he able to find any information online (i.e., PTK’s website). Ex. A-11 at 13:22-14:21, 122:8-16, 122:25-123:16, 124:2-126:24; 131:8-21. 132:12-133:4. Of course, this did not stop Moradian from including his own additions to PTK’s Wikipedia page without any footnote references. *Id.* at 166:7-167:12 (revising PTK’s Founder’s day description, and testifying: “No, there is not a footnote to any of this changes, and no, it’s not necessary [to include a footnote].”). Moradian did not feel he needed to confirm the members were in fact members; he felt his only obligation were to delete them – and hypocritically, he did not feel that the footnote “rule” applied to him, only PTK because there was text he added that contained no cited authority in any footnote. *Id.* at 125-8 (“The lack of a footnote is really all that’s required [to delete notable members].”).

24. When questioned as to whether he had looked for any other notable members of PTK, Moradian responded incredulously that he had spent “Probably between a hundred to a thousand hours . . . Closer to a thousand” searching for other notable members and was essentially unable to locate anyone else besides two prior PTK presidents and Thomas Matthew Crooks. Ex. A-11 at 127:4-130:8, 134:4-137:2. Specifically when asked what was notable about Thomas Matthew Crooks, Moradian responded that he was famous for “being a PTK member.” *Id.* at 131:25-132:3. According to Moradian, Crooks’ association with PTK “was viewed notable, reliable and relevant by media sources.” *Id.* at 132:12-133:4. But only a single media outlet (TMZ)

reported said affiliation. Moradian also testified that when PTK attempted to revert this change and add the Notable members back, he caused that change to be reversed. *Id.* at 143:5-17.

25. Moradian also testified that he revised PTK's article in compliance with Wikipedia's policies and without "bias" – but obviously that is not the case. Ex. A-11 at 49:5-50:1. Three minutes later, he revised his testimony to admit he did act with bias, it was just "lesser" than PTK's "bias." *Id.* at 50:20-51:25. But Wikipedia's Conflict of Interest ("COI") page notes that editors should disclose "any COI," including in instances where an editor is in a legal dispute with the page's subject or when an editor is a competitor. *See* Ex. A-13, Wikipedia Conflict of Interest Policy. An editor can note the conflict at the top of the affected "talk page," in the "edit summary" of any of his contribution, or on his user page. *Id.* Yet Moradian made no note of his conflict on any page or comment, nor did he tell any other Wikipedia user that he had a conflict of interest or was the adverse party to PTK in the lawsuit noted in PTK's article. Ex. A-11 at 69:15-72:15. Nor did Moradian have any reasonable response for why he included Honor Society's litigation contentions but not PTK's in his revisions. *Id.* at 170:25-180:3.

26. I also asked Moradian about Wikipedia's Universal Code of Conduct on "content vandalism and abuse of the projects," which is defined as "[d]eliberately introducing biased, false, inaccurate or inappropriate content, or hindering, impeding or otherwise hampering the creation (and/or maintenance) of content." Ex. A-11 at 97:19-100:6, 100:21-101:12 (emphasis added). In response, Moradian claimed that all of the descriptors must be met, regardless of the "or" connective. *Id.* In other words, Moradian testified that because his revisions did not deliberately introduce biased and false and inaccurate and inappropriate content that did not hinder and impede and hamper the creation and maintenance of PTK's page, he had not violated Wikipedia's

Code of Conduct. *Id.* This tortured reading of the provision reinforces the lengths to which Moradian will go to defend his otherwise bad-faith behavior in this case.

27. Moradian also confirmed that, despite the Court’s prior findings of malice and its finding that there is “no factual basis” for Honor Society’s claim of embezzlement by PTK, he saw no problem repeating the unfounded allegations in his Wikipedia edits. Ex. A-11 at 215:2-216:2. And indeed, he still maintains that these allegations are true. *Id.* Moradian also acknowledged he was aware of the sexual harassment allegations against Risley as early as 2015 but made no revisions to PTK’s Wikipedia page until 2024, when he was in active litigation with PTK. Ex. A-11 at 83:25-89:21. He had no reasonable explanation for his delay and deflected with misguided personal attacks against me. *See, e.g., id.* (“It’s a broad-based coverup and you are the main proponent of that.”). Yet he also testified that “but once I became aware of it, it is our duty, once you’re aware, to add context, add information to help make the page more objective.” *Id.* at 75:19-22.

28. Moradian also maintained that his Wikipedia edits that present Honor Society as the party that began the “lawsuit” are accurate, alleging that each time an amended complaint or counterclaim is filed, those pleadings “can be interpreted as a new lawsuit.” Ex. A-11 at 155:7-163:10. Obviously, Moradian is not a lawyer. Yet because the Court made clear in its Second Preliminary Injunction Order that Honor Society misleads the public when it presents itself as the plaintiff or the initiator of the lawsuit. Moradian has no excuse for continuing to argue that he believes it is permissible to repeat this legally incorrect mischaracterization.

29. Most telling of Moradian’s disdain for this Court was his multiple implications that he views Wikipedia as the trier of fact, not the Court or a jury. Ex. A-11 at 81:19-82:1; 83:22-24 (“Facts are facts and Wikipedia arbitrates and determines that and these are their determinations,

not mine.”). Namely, Moradian alleges that because Wikipedia permitted his revisions to remain (and removed those of PTK), these edits are not misleading and instead speak the truth, despite the Court’s findings to the contrary. *See, e.g., id.* at 202:3-21. In context, Moradian admits that he never told any Wikipedia contributor of his own bias – as President of Honor Society, PTK’s competitor and opposing party in this litigation – so Wikipedia (while certainly not the trier of fact) had no reasonable basis for assessing the credibility of Moradian’s edits.

C. PTK’s Fees Are Reasonable.

30. I have been lead counsel in this lawsuit since PTK filed its complaint on April 20, 2022. I am submitting this Declaration in support of PTK’s Motion for Attorney’s Fees (the “Motion”).

31. I am a member of the Indiana Bar and am admitted to the Bars of the Indiana Supreme Court, the Texas Supreme Court, the United States District Court for the Southern District of Indiana, the Northern District Court of Indiana, the Northern District of Texas, the Eastern District of Texas, the Eastern District of Michigan, the United States Court of Appeals for the Fifth Circuit, the Sixth Circuit, and the Federal Circuit. I have been practicing law for more than 30 years.

32. I am a 1991 graduate of Southern Methodist University and a 1994 graduate of Southern Methodist University School of Law.

33. I have been an attorney in the Indianapolis office of Taft Stettinius & Hollister LLP (“Taft”) since 2008 by way of merger and a Partner that entire time. Taft is an AmLaw 100 firm, with over nearly 1,000 lawyers in offices located throughout Indiana, Illinois, Ohio, Kentucky, Minnesota, Michigan and Washington D.C. Also, at Taft, I am the Practice Group Leader for the

intellectual property practice, presently overseeing the activities of over 100 attorneys and other professionals at the firm. I have served in that capacity for approximately seven (7) years.

34. I have been the recipient of a number of recognitions in my legal career, including: Indiana Super Lawyers, for Intellectual Property Litigation (from 2014 to the present); Honoree for Best Lawyers in America (2012 to the present); Honoree, World Trademark Review, WRT 1000 (2021 to the present); Honoree, IP Stars (2023); and Honoree, Chambers USA, for Intellectual Property (2019 to the present), as well others included in my biography on Taft's website: <https://www.taftlaw.com/people/jonathan-g-polak/>.

35. I have represented clients in over one-hundred different intellectual property-related lawsuits and proceedings in federal and state courts around the country and before the United States Patent and Trademark Office, and countless more that never made it that far. I have monitored litigation matters in the European Union and Australia. In addition to my litigation work, I also assist clients with business-side intellectual property matters, including advising on trademark portfolios, protecting and licensing intellectual property, and intellectual property issues relating to merger or acquisition transactions. I have litigated matters in over 20 states.

36. My areas of practice primarily relate to litigation involving copyrights, patents, trademarks, and software and technology, although I have also litigated insurance disputes, shareholder disputes, construction, engineering, and general commercial matters, among other subject matter. I have a unique specialization in trademark litigation, which forms the basis for several of the recognitions and awards recognized, for example, on Taft's website. I was approached by PTK to represent it in this litigation based on that specialty and my, and my team's, depth of experience with trademark litigation matters. I understand that PTK connected with Taft in part because PTK was unable to identify a law firm in Mississippi that met all its needs for this

litigation. I understand Mississippi is not a hotbed for trademark litigation. For example, since 2022, when this lawsuit was filed, it appears (per PACER statistics) that there have only been 8 trademark cases filed in the Southern District of Mississippi. By comparison, the North District of Illinois has had 3,600 trademark cases in that time, and the Central District of California, where the Newman firm practices locally, has had around 1,600 such cases in that time.

37. In 2024, my hourly rate charged to PTK is \$825. This rate is discounted from my strategic hourly rate for new clients, for complex litigation matters, or for disputes involving a national scope, which is \$910. I am billing PTK at this discounted rate in-part because it a non-profit organization. This is approximately a 10% discount. I have applied that same discount to all members of my team that have worked on PTK-related matters. Even without this discount, my rate is reasonable in the community of intellectual property litigators with comparable skills, reputation, and experience. I base this opinion on my experience in the legal community, my communications with similarly experienced attorneys about fees being charged, and my knowledge of my law firm's hundreds of clients.

38. The volume of work associated with this litigation, and in particular with Honor Society's tortious, malicious, and contemptuous conduct, has been usually high – even relative to other complex cases with a national scope. Certainly, even where the work in complex cases has been substantial, my experience has been that it was at least “on the issues,” and not on satellite issues that are unrelated to the core claims in the case. Undoubtedly, each time keeper who has worked on PTK's First Motion for Temporary Restraining Order and Preliminary Injunction (“First Preliminary Injunction Motion”), PTK's Second Motion for Temporary Restraining Order and Preliminary Injunction and/or Gag Order (“Second Preliminary Injunction Motion”), PTK's Motion for Contempt and Sanctions (“Contempt Motion”), and PTK's Motion for Attorney's Fees

(“Fee Motion”) has done so the exclusion of their ability to work on other matters, as is common with rapid, involved proceedings such as these (e.g., injunctions, instance of contempt, and seeking of associated fees).

39. That said, Taft is well-suited to handle this exceptionally high volume of work based on the significant number of attorneys in its ranks and its support staff, whose time has not been billed to PTK. To be clear, PTK has not requested compensatory fees here for non-billing support staff in its Motion, despite the significant amount of time these people have spent preparing exhibits, intaking Honor Society’s document productions (including the results of its records requests and surveys), assisting with filings, and collecting information used by the billing timekeepers. If PTK ultimately prevails in this litigation, PTK reserves the right to seek reimbursement from Honor Society for all fees incurred. This accommodation is solely for purposes of the pending motion.

40. I am familiar with the timekeeping records kept and maintained by Taft on client matters. Taft keeps those records in the course of its regularly conducted business activities, and it is the regular practice of our law firm to keep such records. All time entries are made at or near the time of the act or events described in them, based on information transmitted by a person with knowledge of those time entries – i.e., timekeepers and/or their assistants. I personally review the bills sent to PTK every month and am aware of all activities of all professionals working on behalf of PTK.

41. Taft’s work in connection with First Preliminary Injunction Motion, Second Preliminary Injunction Motion, Contempt Motion, and Fee Motion has been handled by several timekeepers in addition to me including: Rachel Smoot, Mike Etienne, Hannah Fereshtenkhov, Christine Walsh, Alex Matthews, Haley Sears, Neil Peluchette (all of whom are associates) and

Alexis Rose (who is a paralegal). Like me, each of these timekeepers has a preferred hourly rate, which is higher than the rate at which their time was billed to PTK. In each case, the rate billed to PTK is an approximate 10% discount.

42. Ms. Smoot's hourly rate for PTK has been \$470 throughout this litigation (compared to \$515 strategic). Mr. Etienne's hourly rate for PTK has been \$465 (compared to \$510 strategic). Mr. Peluchette's hourly rate for PTK has been \$420 (compared to \$460 strategic). Ms. Fereshtenkhov's hourly rate for PTK has been \$375, as has Ms. Sears's, Mr. Matthew's, and Ms. Walsh's (compared to \$415 strategic). Ms. Rose's hourly rate for PTK has been \$100. Again, I believe these fees to be reasonable in the field of intellectual property litigation attorneys and paralegals with comparable skills, reputation, and experience, based on my extensive experience in this field. Based on my body of experience working with each of these attorneys, they no doubt have the abilities and competencies to provide excellent services to PTK – as do the attorneys at Wise-Carter. This does not appear to be challenged by out-of-state counsel, who said in a discovery conference with Judge Myers that someone told him Mike Wallace is the best lawyer in Mississippi. (That has been PTK's and Taft's experience as well.) As to Taft, based on my experience, I also can confirm the reasonableness of the Taft associates' and paralegal's hourly rates.

43. As demonstrated, I staffed the First Preliminary Injunction Motion, Second Preliminary Injunction Motion, Contempt Motion, and Fee Motion with associates and a paralegal, which is a cost saving measure and justifies the reasonableness of the aggregate fees.

44. I made a conscientious effort to assign suitable legal work to associates whenever possible to further reduce PTK's attorney's fees. For example, when preparing the motions, either

Ms. Smoot or Mr. Etienne typically handled the primary drafting responsibilities. Taft made a conscientious effort not to duplicate legal work.

45. Attached as Exhibits A-1, A-4, A-8, A-9 to this Declaration are true and correct copies of accounting records summarizing billing data of Taft for representation of PTK in connection with PTK's First Preliminary Injunction Motion, PTK's Second Preliminary Injunction Motion, PTK's Contempt Motion, and PTK's Fee Motion. It should be appreciated that the legal work in connection with each motion includes investigation into Honor Society's conduct prior to the motion, the motion and supporting papers (e.g., briefs, declarations, exhibits) replies and their supporting papers, hearing preparation, travel required for the hearing, and the hearing itself. The legal work also includes responding to Honor Society's motions and responses filed in response to PTK's Motions, including Honor Society's Motion to Strike. These documents have been redacted or edited to protect the privilege that may be contained in some entries but have not been so edited that it is impossible to understand at least the general nature of the work.

46. As explained in more detail below, Exhibits A-1, A-4, A-8, A-9 (each a "Time Report"), summarizes the total amount of fees Taft billed to PTK in connection with each motion based on hours worked by Taft timekeepers and their respective hourly rates. The total fees billed to PTK by Taft for each motion are:

- Ex. A-1: First Preliminary Injunction Motion: \$172,293.00.
- Ex. A-4: Second Preliminary Injunction Motion: \$229,451.00.
- Ex. A-8: Contempt Motion: \$63,810.00.
- Ex. A-9: Fees Motion: \$18,324.00 (through September 30).

47. In each Time Report, the "Invoice" column identifies the unique invoice number for each invoice that Taft provided to PTK. The "Orig Hours" column describes the number of

hours that each timekeeper worked in providing a particular service, recorded in tenths of an hour. The “Orig Amount” is the amount of fees generated (but not necessarily billed) for a service provided by a timekeeper. The Orig Amount is calculated by multiplying the Orig Hours by a timekeeper’s hourly rate for PTK, which is reflected in the “Rate” column.

48. The “Rev Hours” column describes the actual number of hours that PTK was invoiced for a service provided by a timekeeper. This is often less than the Orig Hours. The “Rev Amount” column is the amount actually billed to PTK for a service provided by a timekeeper. The Rev Amount is calculated by multiplying the Rev Hours by the Rate for each timekeeper.

49. To further ensure the reasonableness of Taft’s attorney’s fees, I made discretionary write-offs of hours recorded by timekeepers. The write-offs are reflected in the Rev Amount and Rev Hours columns. The total discount resulting from the write-offs is \$61,294.00. This is an additional 11.2% reduction from the amount of fees generated by the timekeepers, including myself, on top of our already discounted rates.

50. Similar to the Time Reports, Exhibit A-15 summarizes the total costs Taft billed to PTK in connection with each motion. In total, through September 30, 2024, Taft billed \$17,602.77 in costs to PTK. As with the Exhibits A-1, A-4, A-8, and A-9, the Cost Report identifies the unique invoice number for each invoice that Taft provided to PTK. The “Orig Amt” column describes the costs incurred (but not necessarily billed) in connection with a particular service. The “Rev Amt” columns describes the actual costs that PTK was invoiced for a service, which is often less than “Orig Amt.”

51. PTK also incurred \$4,613.57 in court reporter costs associated with the Rule 30(b)(6) deposition taken on October 1, 2024. *See* Exhibit A-16. We do not yet have the videographer costs for that deposition but expect to receive them soon. PTK will supplement its

evidence with that invoice once it is received. Because this 30(b)(6) deposition took place on October 1, 2024, the court reporter costs associated with the deposition are not included in the costs shown in Ex. A-15, which are current only through September 30.

52. Like I did with the Time Reports, I made discretionary write-offs of costs, which are reflected in the Rev Amt column. The total discount from the write-offs of costs is \$5,430.54. This is a 23.6% reduction in costs from the original costs of \$23,033.31, to arrive at only \$17,602.77 in costs billed to PTK, which speaks to the reasonableness of the costs PTK seeks.

53. For each Invoice dated through August 31, PTK has paid its fees in full. Each time, PTK has paid its fees promptly without dispute, further demonstrating the reasonableness of the fees. I do not anticipate any issue with the September invoice, which has not yet been issued.

54. In my experience and training, as described above, as well as my personal observations from my involvement in the work, it is my opinion that the fees incurred in connection with these described activities are reasonable. They were also necessarily incurred. Because of the maliciousness of Honor Society's activities described in the underlying motions, PTK had to seek the relief it did. At every turn, we offered Honor Society an "off ramp" to avoid motion practice on the issues. At no time did Honor Society accept our offers or otherwise withdraw from their conduct. Making matters worse, we have found out-of-state counsel for Honor Society to garble the truth from time to time, whether it be outright falsities or shaded offers of partial truths. And even in where we have obtained explicit relief from this Court, Honor Society has taken what appear to be intentional acts to avoid compliance with those orders. All of this demonstrates a pattern of conduct that required immediate action by PTK. Unfortunately, the repeated nature and high volume of this misconduct has led to the incurrence of substantial attorney's fees and costs

that would not have been incurred but for Honor Society's bad faith. The fees incurred were, in my view, absolutely necessary to avoid further damage to PTK.

55. PTK also anticipates seeking fees based on issues not fully ripe before this Court and reserves the right to do so along with seeking its fees in connection with the appellate proceedings.

I declare under penalty of perjury that the foregoing is true and correct. 28 U.S.C. § 1746.

Executed on: October 14, 2024

/s/ Jonathan G. Polak
Jonathan G. Polak

EXHIBIT A-1

Date	Name	Description	Orig Hrs	Orig Amt	Orig Rate	Rev Hrs	Rev Amt	Invoice	Narrative
03/04/2024	Smoot, Rachel A.	Associate	0.50	235.00	470.00	0.50	235.00	6304101	Call with client regarding FOIA requests. Review message from L. Tincher-Ladner regarding FOIA-type requests made by HS.org to colleges; consider strategy on same; conference with L. Tincher-Ladner regarding same; conference with R. Smoot regarding same.
03/05/2024	Polak, Jonathan G.	Partner	0.50	412.50	825.00	0.50	412.50	6304101	Exchange multiple emails with client regarding recent emails to college presidents by HS.org.; consider strategy on same; review draft email from L. Tincher-Ladner regarding same; prepare revisions to same.
03/06/2024	Polak, Jonathan G.	Partner	0.90	742.50	825.00	0.90	742.50	6304101	Prepare for and attend conference with M. Bernet and D. Linke regarding status of various discovery issues and concerns over recent FOIA requests; prepare email to M. Bernet and D. Linke confirming conversation and depositions; address various issues raised in conference requested by M. Bernet.
03/06/2024	Polak, Jonathan G.	Partner	1.50	1,237.50	825.00	1.50	1,237.50	6304101	Prepare for and attend conference with client and B. Mansfield to discuss situation with FOIA requests and related other issues.
03/06/2024	Polak, Jonathan G.	Partner	0.90	742.50	825.00	0.90	742.50	6304101	Call with client regarding FOIA requests and ongoing email security issue.
03/06/2024	Smoot, Rachel A.	Associate	1.00	470.00	470.00	1.00	470.00	6304101	Attention to email from client regarding PTK email systems.
03/06/2024	Smoot, Rachel A.	Associate	0.20	94.00	470.00	0.20	94.00	6304101	Call and email to Mailchimp's counsel.
03/06/2024	Smoot, Rachel A.	Associate	0.20	94.00	470.00	0.20	94.00	6304101	Confer with IT and co-counsel regarding email security issues.
03/07/2024	Smoot, Rachel A.	Associate	0.40	188.00	470.00	0.40	188.00	6304101	Call and email to Mailchimp counsel.
03/07/2024	Smoot, Rachel A.	Associate	0.30	141.00	470.00	0.30	141.00	6304101	Research case law preventing vexatious use of FOIA requests to seek information; prepare written explanation of same.
03/07/2024	Etienne, William M.	Associate	3.60	1,674.00	465.00	3.60	1,674.00	6304101	Research case law regarding improper use of third party discovery devices generally to harass customer of party to litigation; prepare written explanation of same.
03/07/2024	Etienne, William M.	Associate	3.20	1,488.00	465.00	3.20	1,488.00	6304101	Continue work on issues related to HS.org's communications to colleges; consider strategy on same; prepare email to counsel for HS.org regarding intent to seek a hearing and protective order; conference with M. Wallace regarding same; conference with M. Etienne regarding scope of legal research; review email from Z. Linke regarding same; multiple communications with client regarding emails to colleges.
03/07/2024	Polak, Jonathan G.	Partner	2.50	2,062.50	825.00	0.00	0.00	6304101	
03/08/2024	Etienne, William M.	Associate	0.80	372.00	465.00	0.80	372.00	6304101	Continue to assess case law regarding FOIA requests in pending district court litigation; discuss strategy for PO, TRO, and/or state law claims in view of same.

03/08/2024	Polak, Jonathan G.	Partner	0.50	412.50	825.00	0.50	412.50	6304101	Continue work on strategy for addressing FOIA requests; conference with M. Etienne regarding same; conference with B. Mansfield regarding same. Multiple calls with co-counsel and local counsel related to pending FOIA requests; review and analyze research and case law related to same.
03/08/2024	Smoot, Rachel A.	Associate	1.40	658.00	470.00	1.40	658.00	6304101	Multiple calls with client related to pending email security issues and FOIA requests.
03/08/2024	Smoot, Rachel A.	Associate	0.60	282.00	470.00	0.60	282.00	6304101	Follow up call to Mailchimp counsel.
03/08/2024	Smoot, Rachel A.	Associate	0.10	47.00	470.00	0.10	47.00	6304101	Review survey monkey emails, records request emails, and related correspondence.
03/11/2024	Etienne, William M.	Associate	0.30	139.50	465.00	0.30	139.50	6304101	
03/11/2024	Etienne, William M.	Associate	2.70	1,255.50	465.00	2.70	1,255.50	6304101	Research MS case law regarding tortious interference. Identify template for PTK's motion for leave to file supplemental complaint and memorandum in support of same.
03/11/2024	Etienne, William M.	Associate	0.80	372.00	465.00	0.80	372.00	6304101	Attention to issues related to FOIA, email hack and consumer survey related to HS.org; multiple conferences with client to discuss same; consider issues related to possible supplemental claims on same; multiple communications and conferences with local counsel regarding same.
03/11/2024	Polak, Jonathan G.	Partner	2.50	2,062.50	825.00	2.50	2,062.50	6304101	Call with client and co-counsel related to honor society survey; multiple emails regarding same.
03/11/2024	Smoot, Rachel A.	Associate	0.90	423.00	470.00	0.90	423.00	6304101	Amend Exhibit A to Mailchimp subpoena; send same to client for review.
03/11/2024	Smoot, Rachel A.	Associate	0.70	329.00	470.00	0.70	329.00	6304101	Confer with co-counsel regarding records requests.
03/11/2024	Smoot, Rachel A.	Associate	0.40	188.00	470.00	0.40	188.00	6304101	
03/11/2024	Smoot, Rachel A.	Associate	0.60	282.00	470.00	0.60	282.00	6304101	Review Honor Society production for gmail addresses. Strategize regarding filing supplemental pleading, temporary restraining order, motion for expedited discovery, and response to motion to amend scheduling order.
03/11/2024	Fereshtenkhou, Hannah S.	Associate	0.70	262.50	375.00	0.00	0.00	6304101	Analyze Federal Rule of Civil Procedure 15(d) regarding process for filing supplemental pleading; draft supplemental amended complaint to include claims for tortious interference with contracts and prospective business advantage; research and analyze case law regarding sufficiency of allegations for same.
03/11/2024	Fereshtenkhou, Hannah S.	Associate	3.20	1,200.00	375.00	3.20	1,200.00	6304101	Confer with co-counsel regarding Motion for Leave to File Supplemental First Amended Complaint and David Asari's agency; compile documents in support of same.
03/12/2024	Smoot, Rachel A.	Associate	0.80	376.00	470.00	0.80	376.00	6304101	Attention to email from client regarding survey.
03/12/2024	Smoot, Rachel A.	Associate	0.10	47.00	470.00	0.10	47.00	6304101	Call with Mailchimp counsel regarding direct complaint.
03/12/2024	Smoot, Rachel A.	Associate	0.30	141.00	470.00	0.30	141.00	6304101	
03/12/2024	Etienne, William M.	Associate	2.10	976.50	465.00	2.10	976.50	6304101	Prepare supplemental complaint.

03/12/2024	Etienne, William M.	Associate	4.90	2,278.50	465.00	4.90	2,278.50	6304101	Review comments and edits to supplemental complaint; prepare revisions in view of same.
03/12/2024	Etienne, William M.	Associate	5.90	2,743.50	465.00	5.90	2,743.50	6304101	Revise memorandum in support of motion to amend scheduling order based on comments and edits; prepare additional section of same.
03/12/2024	Polak, Jonathan G.	Partner	0.70	577.50	825.00	0.70	577.50	6304101	Review emails forwarded from L. Tincher-Ladner regarding open records requests and communications with colleges; continue work on strategy for same.
03/12/2024	Fereshtenkhov, Hannah S.	Associate	2.20	825.00	375.00	2.20	825.00	6304101	Draft declaration of L. Tincher-Ladner in support of motion for temporary restraining order.
03/12/2024	Fereshtenkhov, Hannah S.	Associate	1.00	375.00	375.00	0.00	0.00	6304101	Strategize regarding supplemental amended complaint and elements of tortious interference with contract; revise supplemental amended complaint based on same.
03/12/2024	Fereshtenkhov, Hannah S.	Associate	1.60	600.00	375.00	1.60	600.00	6304101	Draft memorandum of law in support of motion for leave to supplement amended complaint; research and analyze case law regarding factors supporting supplementation for same.
03/13/2024	Etienne, William M.	Associate	2.20	1,023.00	465.00	2.20	1,023.00	6304101	Review additional comments to supplemental complaint; provide additional revisions based on same.
03/13/2024	Etienne, William M.	Associate	11.40	5,301.00	465.00	11.40	5,301.00	6304101	Prepare portions of memorandum in support of motion for TRO and PI.
03/13/2024	Polak, Jonathan G.	Partner	1.20	990.00	825.00	1.20	990.00	6304101	Continue work on Supplemental Complaint; conference with M. Etienne; work on related documents for TRO and related relief.
03/13/2024	Smoot, Rachel A.	Associate	0.70	329.00	470.00	0.70	329.00	6304101	Confer with co-counsel regarding next steps related to Motion to Supplement Complaint, Motion for Temporary Restraining Order, and all related documentation.
03/13/2024	Smoot, Rachel A.	Associate	1.10	517.00	470.00	1.10	517.00	6304101	Revise and edit First Amended Supplemental Complaint; confer with co-counsel regarding same.
03/13/2024	Fereshtenkhov, Hannah S.	Associate	1.00	375.00	375.00	1.00	375.00	6304101	Proofread and revise supplemental amended complaint; strategize regarding temporary restraining order and motion for leave to supplement amended complaint.
03/13/2024	Fereshtenkhov, Hannah S.	Associate	5.20	1,950.00	375.00	5.20	1,950.00	6304101	Continue drafting memorandum of law in support of motion for leave to supplement amended complaint; research and analyze case law regarding Federal Rule of Civil Procedure 15(d) as support for supplementing pleading with new claims and parties for same.
03/14/2024	Etienne, William M.	Associate	8.80	4,092.00	465.00	8.80	4,092.00	6304101	Research additional case law; revise memorandum in support of motion for leave to file supplemental complaint based on same.
03/14/2024	Etienne, William M.	Associate	2.10	976.50	465.00	2.10	976.50	6304101	Review further comments and edits to supplemental complaint; prepare additional revisions in view of same.
03/14/2024	Etienne, William M.	Associate	0.50	232.50	465.00	0.50	232.50	6304101	Prepare motion for supplemental complaint.

03/14/2024	Etienne, William M.	Associate	6.20	2,883.00	465.00	6.20	2,883.00	6304101	Revise Tincher-Ladner declaration and circulate for comments.
03/14/2024	Polak, Jonathan G.	Partner	0.90	742.50	825.00	0.90	742.50	6304101	Continue work on Supplemental Complaint, TRO and related papers and strategy; multiple email communications regarding same.
03/14/2024	Smoot, Rachel A.	Associate	6.10	2,867.00	470.00	0.00	0.00	6304101	Draft Motion for Leave to Conduct Expedited Discovery and memo in support of same, expedited discovery requests, and Rule 26 Notice for HonorSociety.org.
03/14/2024	Smoot, Rachel A.	Associate	5.10	2,397.00	470.00	0.00	0.00	6304101	Draft Memorandum in Support of Motion for Temporary Restraining Order and Preliminary Injunction.
03/14/2024	Smoot, Rachel A.	Associate	0.50	235.00	470.00	0.50	235.00	6304101	Revise and edit Declaration of Lynn Tincher-Ladner.
03/14/2024	Fereshtenkhov, Hannah S.	Associate	1.50	562.50	375.00	0.00	0.00	6304101	Continue drafting fact section for memorandum of law in support of motion for leave to supplement amended complaint; revise declaration for L. Tincher-Ladner.
03/14/2024	Fereshtenkhov, Hannah S.	Associate	2.10	787.50	375.00	0.00	0.00	6304101	Research and analyze case law regarding temporary restraining order factors; draft argument regarding temporary restraining order factors for memorandum in support of motion for temporary restraining order based on same.
03/15/2024	Etienne, William M.	Associate	2.20	1,023.00	465.00	2.20	1,023.00	6304101	Continue to prepare memorandum in support of motion for leave to supplement amended complaint.
03/15/2024	Etienne, William M.	Associate	6.30	2,929.50	465.00	6.30	2,929.50	6304101	Review and provide comments on memorandum in support of motion for TRO and PI.
03/15/2024	Etienne, William M.	Associate	1.20	558.00	465.00	1.20	558.00	6304101	Provide edits to Tincher-Ladner declaration in support of PTK's motions.
03/15/2024	Polak, Jonathan G.	Partner	1.40	1,155.00	825.00	1.40	1,155.00	6304101	Continue work on TRO, supplemental complaint and related documents; exchange emails with team regarding same.
03/15/2024	Smoot, Rachel A.	Associate	0.10	47.00	470.00	0.10	47.00	6304101	Attention to SurveyMonkey Support email received from client; respond to client regarding same.
03/15/2024	Smoot, Rachel A.	Associate	6.10	2,867.00	470.00	0.00	0.00	6304101	Continue to draft Memorandum in Support of Motion for Temporary Restraining Order and Preliminary Injunction; revise and edit same.
03/15/2024	Smoot, Rachel A.	Associate	0.50	235.00	470.00	0.50	235.00	6304101	Revise and edit Declaration of Lynn Tincher-Ladner; send same to client for review.
03/15/2024	Fereshtenkhov, Hannah S.	Associate	1.50	562.50	375.00	0.00	0.00	6304101	Research and analyze case law regarding public interest in privacy and public interest factor for motion for temporary restraining order.
03/16/2024	Etienne, William M.	Associate	0.80	372.00	465.00	0.80	372.00	6304101	Revise Tincher-Ladner declaration; related information to supplement pleadings.
03/16/2024	Polak, Jonathan G.	Partner	3.20	2,640.00	825.00	3.20	2,640.00	6304101	Continue work on TRO and related papers and discovery.

03/16/2024	Smoot, Rachel A.	Associate	0.40	188.00	470.00	0.40	188.00	6304101	Confer with co-counsel regarding preparation of remaining documents to be filed (i.e., Motion for Temporary Restraining Order and Preliminary Injunction, Motion for Leave to Conduct Expedited Discovery, Motion for Leave to file Supplemental First Amended Complaint).
03/16/2024	Smoot, Rachel A.	Associate	2.00	940.00	470.00	2.00	940.00	6304101	Revise and edit Motion for Leave to Conduct Expedited Discovery and Memorandum in Support of Same; draft Rule 30(b)(6) Notice to HonorSociety.org.
03/17/2024	Etienne, William M.	Associate	1.80	837.00	465.00	1.80	837.00	6304101	Revise PTK's memo in support of motion for leave to file supplemental complaint based on comments.
03/17/2024	Etienne, William M.	Associate	0.60	279.00	465.00	0.60	279.00	6304101	Revise Tincher-Ladner declaration to align with revised motions.
03/17/2024	Etienne, William M.	Associate	1.70	790.50	465.00	1.70	790.50	6304101	Revise supplemental amended complaint based on comments.
03/17/2024	Etienne, William M.	Associate	3.50	1,627.50	465.00	3.50	1,627.50	6304101	Review and prepare edits to memo in support of motion for expedited discovery.
03/17/2024	Etienne, William M.	Associate	3.90	1,813.50	465.00	3.90	1,813.50	6304101	Review and provide additional edits to motion and memo in support of motion for TRO and PI.
03/17/2024	Etienne, William M.	Associate	0.70	325.50	465.00	0.70	325.50	6304101	Prepare correspondence to local counsel regarding filing of PTK's three motions, memoranda in support, and exhibits.
03/17/2024	Polak, Jonathan G.	Partner	7.90	6,517.50	825.00	7.90	6,517.50	6304101	Continue work on TRO and supplemental complaint documents; exchange emails with litigation team on same; exchange emails with L. Tincher-Ladner on same; prepare draft email to counsel regarding intentions on filing and need for conference.
03/17/2024	Smoot, Rachel A.	Associate	7.50	3,525.00	470.00	7.50	3,525.00	6304101	Revise and edit Motion for Temporary Restraining Order and Memorandum in Support of same; multiple calls with co-counsel regarding same; revise and edit Motion for Leave to Conduct Expedited Discovery and Memorandum in Support of same as well as limited discovery requests and Notices of Rule 30(b)(6) depositions; revise and edit Declaration of Lynn Tincher-Ladner.
03/18/2024	Etienne, William M.	Associate	0.60	279.00	465.00	0.60	279.00	6304101	Prepare revised version of motion for supplemental complaint based on comments.
03/18/2024	Etienne, William M.	Associate	2.60	1,209.00	465.00	2.60	1,209.00	6304101	Prepare revised version of memorandum in support of motion for expedited discovery based on comments.
03/18/2024	Etienne, William M.	Associate	4.60	2,139.00	465.00	4.60	2,139.00	6304101	Prepare revised version of memorandum in support of motion for TRO and PI based on comments.
03/18/2024	Etienne, William M.	Associate	0.80	372.00	465.00	0.80	372.00	6304101	Prepare revised version of Tincher-Ladner declaration based on comments.
03/18/2024	Etienne, William M.	Associate	1.40	651.00	465.00	1.40	651.00	6304101	Prepare instructions for exhibits; review finalized versions of same.
03/18/2024	Etienne, William M.	Associate	0.60	279.00	465.00	0.60	279.00	6304101	Participate in meet and confer with local counsel regarding PTK's forthcoming motions.

03/18/2024	Polak, Jonathan G.	Partner	3.50	2,887.50	825.00	3.50	2,887.50	6304101	Continue work on Supplemental Pleading and TRO-related documents; numerous emails exchanged with team regarding same; finalize same for filing.
03/18/2024	Polak, Jonathan G.	Partner	0.50	412.50	825.00	0.50	412.50	6304101	Hold conference with counsel for Honor Society and Honor Society Foundation to discuss supplemental pleading and TRO papers; consider next steps in light of same.
03/18/2024	Polak, Jonathan G.	Partner	0.30	247.50	825.00	0.30	247.50	6304101	Conference with M. Wynne (Grayson College) regarding public records request; prepare email to L. Tincher-Ladner regarding same.
03/18/2024	Polak, Jonathan G.	Partner	1.40	1,155.00	825.00	1.40	1,155.00	6304101	Prepare for hearing on TRO and motion for leave to file supplemental pleading; review file materials for same.
03/18/2024	Smoot, Rachel A.	Associate	1.20	564.00	470.00	1.20	564.00	6304101	Revise and edit Memorandum in Support of Motion for Leave to Conduct Expedited Discovery.
03/18/2024	Smoot, Rachel A.	Associate	0.40	188.00	470.00	0.40	188.00	6304101	Revise and edit Declaration Lynn Tincher-Ladner.
03/18/2024	Rose, Alexis	Staff	2.50	250.00	100.00	2.50	250.00	6304101	Finalize motions and exhibits for TRO filing, prepare and organize documents for telephonic conference scheduled on 3/19.
03/19/2024	Etienne, William M.	Associate	1.70	790.50	465.00	1.70	790.50	6304101	Prepare case law summary and comments regarding TRO briefing for use during conference with Court.
03/19/2024	Etienne, William M.	Associate	1.60	744.00	465.00	1.60	744.00	6304101	Participate in conference with Court.
03/19/2024	Etienne, William M.	Associate	0.30	139.50	465.00	0.30	139.50	6304101	Discuss exhibits and strategy regarding TRO and PI hearing for Wednesday, 3/27.
03/19/2024	Polak, Jonathan G.	Partner	2.30	1,897.50	825.00	2.30	1,897.50	6304101	Prepare for and attend conference with court to discuss scheduling of TRO and related issues; post-hearing conference with local counsel; prepare email updating client on events; conference with B. Mansfield regarding status.
03/19/2024	Polak, Jonathan G.	Partner	1.30	1,072.50	825.00	1.30	1,072.50	6304101	Begin preparation for TRO hearing; identify exhibits to be used at hearing; conference with L. Tincher-Ladner regarding hearing agenda and preparation.
03/19/2024	Smoot, Rachel A.	Associate	1.60	752.00	470.00	1.60	752.00	6304101	Attend status conference with Court related to Motions for Leave to File Supplemental First Amended Complaint, Temporary Restraining Order/Preliminary Injunction, and Conduct Expedited Discovery; confer with co-counsel regarding same.
03/19/2024	Smoot, Rachel A.	Associate	1.00	470.00	470.00	1.00	470.00	6304101	Prepare for hearing presentation.
03/20/2024	Etienne, William M.	Associate	0.40	186.00	465.00	0.40	186.00	6304101	Prepare exhibit list for TRO hearing.
03/20/2024	Polak, Jonathan G.	Partner	0.50	412.50	825.00	0.50	412.50	6304101	Exchange multiple emails with client on public records requests; review emails from colleges regarding same.
03/20/2024	Polak, Jonathan G.	Partner	0.50	412.50	825.00	0.50	412.50	6304101	Continue preparation for hearing on TRO; exchange emails with M. Wallace regarding same.
03/20/2024	Polak, Jonathan G.	Partner	0.50	412.50	825.00	0.50	412.50	6304101	Conference with M. Etienne regarding: exhibit list preparation and strategy on same.

03/20/2024	Polak, Jonathan G.	Partner	0.40	330.00	825.00	0.40	330.00	6304101	Conference with D. Newman and D. Linke regarding approach to TRO hearing and related issues; prepare email to client regarding same.
03/20/2024	Smoot, Rachel A.	Associate	1.20	564.00	470.00	1.20	564.00	6304101	Draft outline for Hearing on Temporary Restraining Order; confer with co-counsel regarding same.
03/21/2024	Etienne, William M.	Associate	3.40	1,581.00	465.00	3.40	1,581.00	6304101	Review LTL Declaration; continue to identify and prepare exhibits for hearing.
03/21/2024	Polak, Jonathan G.	Partner	0.50	412.50	825.00	0.50	412.50	6304101	Exchange multiple emails with client on public records requests; review emails from colleges regarding same.
03/21/2024	Polak, Jonathan G.	Partner	0.50	412.50	825.00	0.50	412.50	6304101	Continue preparation for hearing on TRO; exchange emails with M. Wallace regarding same.
03/21/2024	Smoot, Rachel A.	Associate	5.10	2,397.00	470.00	5.10	2,397.00	6304101	Continue to draft outline for Hearing on Temporary Restraining Order; compile exhibits in support of same.
03/21/2024	Smoot, Rachel A.	Associate	0.20	94.00	470.00	0.20	94.00	6304101	Request additional information from client related to records requests and survey.
03/21/2024	Smoot, Rachel A.	Associate	0.20	94.00	470.00	0.20	94.00	6304101	Follow up email to Natasha Gill regarding Mailchimp direct complaint.
03/22/2024	Polak, Jonathan G.	Partner	0.30	247.50	825.00	0.30	247.50	6304101	Exchange emails w/ D. Newman regarding: TRO hearing.
03/22/2024	Polak, Jonathan G.	Partner	0.90	742.50	825.00	0.90	742.50	6304101	Continue work on TRO hearing preparation.
03/22/2024	Polak, Jonathan G.	Partner	0.40	330.00	825.00	0.40	330.00	6304101	communications with schools on public records requests.
03/22/2024	Polak, Jonathan G.	Partner	0.40	330.00	825.00	0.40	330.00	6304101	Receive and review email with proposed objections to PTK evidence; consider same.
03/22/2024	Fereshtenkhov, Hannah S.	Associate	0.10	37.50	375.00	0.00	0.00	6304101	Strategize regarding research for reply in support of motion for temporary restraining order, including case law regarding public records requests in the context of protective orders or temporary restraining orders.
03/22/2024	Fereshtenkhov, Hannah S.	Associate	1.30	487.50	375.00	1.30	487.50	6304101	Research and analyze case law regarding protective orders or temporary restraining orders for party making public records requests to third-parties.
03/23/2024	Etienne, William M.	Associate	1.10	511.50	465.00	1.10	511.50	6304101	Review HS's motion to exclude evidence of Tinchel-Lader declaration; prepare notes regarding same.
03/23/2024	Etienne, William M.	Associate	2.20	1,023.00	465.00	2.20	1,023.00	6304101	Research case law for memorandum in opposition to HS's motion to exclude evidence.
03/23/2024	Etienne, William M.	Associate	5.70	2,650.50	465.00	5.70	2,650.50	6304101	Prepare memorandum in support of PTK's opposition to HS's motion to exclude evidence.
03/23/2024	Etienne, William M.	Associate	1.80	837.00	465.00	1.80	837.00	6304101	Review HS's response to PTK's motion for TRO and PI; prepare notes regarding same.
03/23/2024	Etienne, William M.	Associate	3.30	1,534.50	465.00	3.30	1,534.50	6304101	Prepare reply in support of PTK's motion for TRO.
03/23/2024	Polak, Jonathan G.	Partner	6.50	5,362.50	825.00	6.50	5,362.50	6304101	Review filings made by HS.org in response to TRO and related motions; work on strategy for responding to same; work on reply briefs; multiple communications with M. Etienne regarding same.

03/23/2024	Smoot, Rachel A.	Associate	4.60	2,162.00	470.00	4.60	2,162.00	6304101	Attention to Defendants' Response to Motion for Leave to Conduct Expedited Discovery; draft Reply Brief in Support of PTK's Motion for Leave to Conduct Expedited Discovery.
03/23/2024	Smoot, Rachel A.	Associate	0.70	329.00	470.00	0.70	329.00	6304101	Draft rebuttal facts section related to survey questions for Motion for Temporary Restraining Order and Preliminary Injunction.
03/23/2024	Rose, Alexis	Staff	1.00	100.00	100.00	1.00	100.00	6304101	Prepare binders of 3/23/2024 filings for TRO hearing. Continue to prepare reply brief in support of motion for TRO and PI.
03/24/2024	Etienne, William M.	Associate	8.50	3,952.50	465.00	8.50	3,952.50	6304101	Continue working on replies to Honor Society's Responses and motion to exclude; internal communications regarding same.
03/24/2024	Polak, Jonathan G.	Partner	8.60	7,095.00	825.00	8.60	7,095.00	6304101	Attention to Michael Moradian Declaration; draft Supplemental Declaration of Lynn Tincher-Ladner.
03/24/2024	Smoot, Rachel A.	Associate	2.10	987.00	470.00	2.10	987.00	6304101	Draft Reply Brief in Support of Motion for Temporary Restraining Order and Preliminary Injunction.
03/24/2024	Smoot, Rachel A.	Associate	2.10	987.00	470.00	2.10	987.00	6304101	Continue to draft Reply in Support of Motion for Expedited Discovery; revise and edit same.
03/24/2024	Smoot, Rachel A.	Associate	1.90	893.00	470.00	1.90	893.00	6304101	Attention to draft email to opposing counsel.
03/24/2024	Smoot, Rachel A.	Associate	0.20	94.00	470.00	0.20	94.00	6304101	Revise and edit Response to Motion to Exclude Evidence.
03/24/2024	Smoot, Rachel A.	Associate	0.40	188.00	470.00	0.40	188.00	6304101	Review and respond to email correspondence from M. Etienne and J. Polak; Research precedent cited by Defendants in opposition to our TRO; Research precedent in support of our alleged harm.
03/24/2024	Walsh, Christine	Associate	2.60	975.00	375.00	2.60	975.00	6304101	Travel from IND to JAN for hearing on temporary restraining order and preliminary injunction.
03/25/2024	Etienne, William M.	Associate	7.70	3,580.50	465.00	0.00	0.00	6304101	Revise reply briefing in support of motion for TRO and PI based on comments.
03/25/2024	Etienne, William M.	Associate	6.20	2,883.00	465.00	6.20	2,883.00	6304101	Research relevant case law in furtherance of motion for TRO and PI.
03/25/2024	Etienne, William M.	Associate	1.50	697.50	465.00	1.50	697.50	6304101	Revise response in memorandum in support of opposition to HS's motion to exclude evidence based on comments.
03/25/2024	Etienne, William M.	Associate	2.30	1,069.50	465.00	2.30	1,069.50	6304101	Prepare opposition to HS motion to exclude evidence. Identify additional case law regarding tortious interference with contracts in preparation for TRO and PI hearing.
03/25/2024	Etienne, William M.	Associate	0.40	186.00	465.00	0.40	186.00	6304101	Continue work on TRO-related papers and finalize same for filing.
03/25/2024	Polak, Jonathan G.	Partner	5.40	4,455.00	825.00	5.40	4,455.00	6304101	Travel to Jackson for hearings.
03/25/2024	Polak, Jonathan G.	Partner	6.00	4,950.00	825.00	6.00	4,950.00	6304101	Travel to Jackson from Columbus.
03/25/2024	Smoot, Rachel A.	Associate	7.00	3,290.00	470.00	7.00	3,290.00	6304101	Revise and edit Reply Brief in Support of Motion for Expedited Discovery; finalize same, including exhibit.
03/25/2024	Smoot, Rachel A.	Associate	1.00	470.00	470.00	1.00	470.00	6304101	Revise and edit Response in Opposition to Objections to portions to Tincher-Ladner Declaration.
03/25/2024	Smoot, Rachel A.	Associate	0.80	376.00	470.00	0.80	376.00	6304101	

03/25/2024	Smoot, Rachel A.	Associate	1.30	611.00	470.00	1.30	611.00	6304101	Revise and edit Reply Brief in Support of Motion for Leave to File First Amended Supplemental Complaint.
03/25/2024	Smoot, Rachel A.	Associate	0.10	47.00	470.00	0.10	47.00	6304101	Attention to response received from SurveyMonkey. Prepare for hearing in Jackson, including reviewing additional case law related to interference with contract.
03/25/2024	Smoot, Rachel A.	Associate	2.20	1,034.00	470.00	2.20	1,034.00	6304101	Revise and edit Supplemental Declaration of Lynn Tincher-Ladner.
03/25/2024	Smoot, Rachel A.	Associate	0.90	423.00	470.00	0.90	423.00	6304101	Call to Natasha Gill regarding Mailchimp subpoena.
03/25/2024	Smoot, Rachel A.	Associate	0.10	47.00	470.00	0.10	47.00	6304101	Review and respond to email correspondence from J. Polak; Research case relied on by opposing counsel, and potential counter-cases.
03/25/2024	Walsh, Christine	Associate	0.50	187.50	375.00	0.50	187.50	6304101	Prepare case law outline for TRO hearing.
03/26/2024	Etienne, William M.	Associate	0.80	372.00	465.00	0.80	372.00	6304101	Review outlined arguments and discuss overall strategy and case law for TRO hearing.
03/26/2024	Etienne, William M.	Associate	1.20	558.00	465.00	1.20	558.00	6304101	Conduct review of image files of survey responses produced to PTK ahead of hearing.
03/26/2024	Etienne, William M.	Associate	2.20	1,023.00	465.00	2.20	1,023.00	6304101	Prepare for TRO hearing; conference with M. Wallace and team to discuss and strategize on same; respond to various client communications on same.
03/26/2024	Polak, Jonathan G.	Partner	3.50	2,887.50	825.00	3.50	2,887.50	6304101	Conference with community college representative regarding recent consumer survey requests.
03/26/2024	Polak, Jonathan G.	Partner	0.40	330.00	825.00	0.40	330.00	6304101	Call to Natasha Gill regarding Mailchimp subpoena.
03/26/2024	Smoot, Rachel A.	Associate	0.10	47.00	470.00	0.10	47.00	6304101	Prepare for hearing on all pending PTK Motions, including drafting table of inconsistencies in Moradian deposition; attend Temporary Restraining Order preparation session; attention to emails from President of Colby Community College related to multiple records requests.
03/26/2024	Smoot, Rachel A.	Associate	3.00	1,410.00	470.00	3.00	1,410.00	6304101	Review additional documents of 17,000 produced to PTK ahead of TRO hearing.
03/27/2024	Etienne, William M.	Associate	3.80	1,767.00	465.00	3.80	1,767.00	6304101	Continue pre-hearing preparation; participate in same.
03/27/2024	Etienne, William M.	Associate	5.10	2,371.50	465.00	0.00	0.00	6304101	Review documents produced by HS.org related to TRO hearing; conference with R. Smoot and M. Etienne regarding same; prepare for hearing based on same.
03/27/2024	Polak, Jonathan G.	Partner	1.20	990.00	825.00	1.20	990.00	6304101	Continue preparation generally for hearing on TRO and related motions; attend same.
03/27/2024	Polak, Jonathan G.	Partner	5.00	4,125.00	825.00	5.00	4,125.00	6304101	Post-hearing evaluation of presentation and evidence and consider related discovery issues in connection with larger part of the case.
03/27/2024	Polak, Jonathan G.	Partner	0.90	742.50	825.00	0.90	742.50	6304101	Attend hearing on pending motions for temporary restraining order/preliminary injunction, leave to file supplemental first amended complaint, and expedited discovery; attend post-hearing meeting regarding same.
03/27/2024	Smoot, Rachel A.	Associate	6.30	2,961.00	470.00	6.30	2,961.00	6304101	Travel JAN to IND subsequent to TRO hearing.
03/28/2024	Etienne, William M.	Associate	8.10	3,766.50	465.00	0.00	0.00	6304101	Travel back to Indianapolis.
03/28/2024	Polak, Jonathan G.	Partner	6.00	4,950.00	825.00	6.00	4,950.00	6304101	

03/28/2024	Smoot, Rachel A.	Associate	7.00	3,290.00	470.00	7.00	3,290.00	6304101	Travel from Jackson to Columbus.
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Totals			361.70	194,792.50		314.10	172,293.00		
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EXHIBIT A-2

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION

PHI THETA KAPPA HONOR SOCIETY PLAINTIFF
VERSUS CIVIL ACTION NO. 3:22-CV-00208-CWR-RPM
HONORSOCIETY.ORG, INC., ET AL. DEFENDANTS

EVIDENTIARY HEARING
BEFORE THE HONORABLE CARLTON W. REEVES,
UNITED STATES DISTRICT COURT JUDGE,
MARCH 27, 2024,
JACKSON, MISSISSIPPI

APPEARANCES:

FOR THE PLAINTIFF: MICHAEL B. WALLACE, ESQ.
JONATHAN G. POLAK, ESQ.

FOR THE DEFENDANTS: W. WHITAKER RAYNER, ESQ.
DEREK NEWMAN, ESQ.

REPORTED BY:

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IN OPEN COURT, MARCH 27, 2024

THE COURT: You may be seated.

Good morning. I apologize for the delay. Who's here for the plaintiff?

MR. WALLACE: Your Honor, I'm Mike Wallace --

THE COURT: Make sure your microphone is on, Mr. Wallace.

MR. WALLACE: Thank you. I'm Mike Wallace from the Wise Carter firm. With me at counsel table is Jonathan Polak of the Taft, Stettinius & Hollister firm. Also is Dr. Lynn Tincher-Ladner who is a counter defendant in her own right, and she is president of Phi Theta Kappa. With us but not at counsel table from the Taft firm are Rachel Smoot and Mike Etienne.

THE COURT: Okay. Thank you, Mr. Wallace.

MR. WALLACE: Thank you, Judge.

THE COURT: And who's here for the defendant?

MR. RAYNER: Good morning, Your Honor. Whit Rayner from the Jones Walker law firm on behalf of HonorSociety.Org, Inc. With me is Mr. Michael Moradian who is the executive director of Honor Society, and also Derek Newman of the Newman Law Firm, and behind the table is Mr. Nadir Moradian.

THE COURT: All right. Thank you.

1 All right. Counsel, we have several motions before
2 the Court, and we'll figure out how we're going to proceed
3 with them. Let me hear from the plaintiff.

4 MR. WALLACE: On how we're going to proceed?

5 THE COURT: Yeah.

6 MR. WALLACE: Is that the question?

7 THE COURT: Yeah. Yeah. Well, I know we have a TRO
8 pending.

9 MR. WALLACE: Yes, sir.

10 THE COURT: But we also have these other motions for
11 expedited discovery. I think the expedited discovery is --
12 well, the motion to supplement --

13 MR. WALLACE: Yeah.

14 THE COURT: -- the complaint, if the Court grants
15 that, grants the motion to supplement, I'm just trying to
16 think about these things, how that might affect any TRO,
17 for example, that the Court might grant. And I know the
18 parties are awaiting from the Court rulings on these
19 earlier motions, that if the Court grants or denies those
20 earlier motions, how that might impact the current motion
21 for a TRO and otherwise.

22 MR. WALLACE: Let me respond this way, Judge. We
23 are prepared, and we believe the most efficient way to
24 proceed is to argue -- excuse me -- is to argue all three
25 motions together. They were filed together. They were

1 briefed together. They relate to each other.

2 The motion to supplement the complaint I think is
3 logically the first thing. If Your Honor decides we cannot
4 present these claims, it seems to me that you're probably
5 not going to be able to grant a TRO on claims you're not
6 going to let us pursue in this court.

7 So I think the way I intend to address it is to
8 begin with our right to supplement, to move quickly to
9 whether or not we're now entitled to emergency relief on
10 the claims that we want to bring, and to close with a few
11 words about discovery. Because if we're allowed to
12 proceed, then we're going to get more discovery somewhere
13 somehow, and we need to talk about that. So I think it
14 makes sense to argue all three together, and I think that's
15 the logical progression of how the Court would consider
16 them.

17 THE COURT: Okay. Thank you. What do the
18 defendants say about that?

19 MR. NEWMAN: Thank you. Good morning, Your Honor.
20 My name is Derek Newman. I represent HonorSociety.Org,
21 Inc., and I agree with Mr. Wallace. I think that the
22 approach that would be most efficient is to allow the
23 plaintiff to argue all three motions, and then we would
24 argue all three motions. Perhaps there would be a
25 rebuttal, perhaps there would be a surrebuttal, but I think

1 that's more efficient than stand up, sit down, stand up,
2 sit down for lots of motions.

3 THE COURT: Okay. Thank you. You may proceed,
4 Mr. Wallace.

5 MR. WALLACE: Thank you, Your Honor.

6 THE COURT: And we'll do it like that, I think, take
7 up all of these motions, because I do think the questions
8 that I sort of mapped out might go from motion to motion.

9 MR. WALLACE: Thank you, Your Honor.

10 As I say, I'm Mike Wallace for the plaintiff and
11 counter defendants. I am going to address the motions. I
12 am going to deal with the law on the motions, and I think
13 I've got enough to get us through this morning.

14 The Court may have questions about facts and what
15 has happened in discovery. And Mr. Polak may need to
16 address those, because he's been on top of this case. As
17 you know, I've been in this courthouse on a fairly lengthy
18 trial lately. I've missed some depositions.

19 So I'm here to deal with it. If there are things I
20 can't deal with, we can ask Mr. Polak, and I think he's
21 going to want to say something about the discovery we got
22 last night from them about the time I went to bed, about
23 62,000 pages of documents. And what's in there and what's
24 not in there will probably have some effect on how much
25 discovery we still need to do.

1 So let me begin, as I said I would, with the
2 supplemental complaint. I know Your Honor is disappointed
3 that I didn't bring a poster board with me this morning,
4 but you know what Rule 15(d) says, and the most important
5 words are "may" and "any." It says the Court may permit
6 the filing of the supplemental complaint; that means it may
7 or may not. You've got discretion. But if it chooses to
8 do so, we may assert any claim that we have against the
9 other side. There is no substantive restriction on the
10 kinds of claims you may allow us to permit.

11 It is certainly true that in the exercise of
12 discretion courts often look at the extent to which the
13 supplemental claims are related to the already existing
14 claims. They rely on the *Becnel* case from Louisiana, in
15 which a pro se plaintiff wanted to hire -- wanted to bring
16 in new parties and new complaints that had no relation to
17 anything that had gone before, and the court said, no,
18 we're not going to do that. And that's certainly a
19 reasonable exercise of discretion.

20 But the claims here are clearly connected. On the
21 very first page of their brief on the TRO, Honor Society
22 admits that they're in competition with us, and they claim,
23 again on the first page, to be doing it fairly and
24 lawfully. Well, that's the issue, we think they're
25 competing with us unfairly and unlawfully. The first

1 amended complaint sets out four ways in which they are
2 competing with us unfairly and unlawfully. The
3 supplemental complaint sets forth two new ways that they've
4 just started doing within the last couple of weeks that we
5 say are unfair and unlawful.

6 The claims are clearly related, and I think the best
7 evidence that the claims are related is that Mr. Moradian's
8 affidavit submits into evidence materials that they've
9 gotten from their records requests and surveys. Of course
10 what they're doing is related to this case, they're using
11 it in this case.

12 Indeed, the first page of their brief on the TRO
13 says they used this to investigate frivolous lawsuits. I
14 suppose they're talking about this one unless they've got a
15 whole supply of lawsuits we don't know about. So by their
16 own admission, what they're doing is related to what we've
17 been doing in this Court for the last couple of years.

18 THE COURT: Let me ask this question here,
19 Mr. Wallace.

20 MR. WALLACE: Yes, sir.

21 THE COURT: You know, we have gavels on our docket
22 sheet with respect to motions that have not been ruled upon
23 yet, and I notice that there is a motion that you all
24 filed, motion for leave to file second amended complaint,
25 back in September. And I know the parties have met and

1 conferred and have been to Judge Ball at certain times.
2 But with respect to the request -- with respect to the
3 relief requested in that motion, the leave to file that
4 second amended complaint, since that time have the parties
5 been operating as if those issues were ripe for discovery
6 and all that?

7 Because I know since Judge Ball is now absent and
8 gone, Judge Myers recently extended discovery on the
9 underlying -- on these operative -- what I believe is the
10 operative complaint.

11 MR. WALLACE: Yes, sir.

12 THE COURT: And that discovery deadline is sometime
13 in August, I think, of this year. Does that deadline allow
14 the parties to pursue those issues that's in your motion at
15 docket number 79?

16 MR. WALLACE: Uh-huh.

17 THE COURT: The reason I was asking, I'm trying to
18 figure out -- because you know this case was filed sometime
19 ago. Leave was -- I guess there was a first amended
20 complaint.

21 MR. WALLACE: Right.

22 THE COURT: There was a request for a second amended
23 complaint, and there's been a lot of discovery since the
24 filing of 79 and today. There's been a lot of discovery.
25 That discovery that has occurred, has it taken into account

1 the proposed second amended complaint and the grounds that
2 the plaintiffs want to pursue in that second amended
3 complaint? Do you understand what I'm asking?

4 MR. WALLACE: Yes, I do understand, and I think I
5 know the answer. Although Mr. Polak may correct me.

6 The first amended complaint has a claim that is
7 titled false advertising. They believe we didn't plead it.
8 When that came up, we filed the second amended complaint to
9 say, well, if we didn't do it right the first time, here it
10 is; we want to do it. I think all of our discovery has
11 proceeded on the assumption that we have a false
12 advertising claim in this case. There's been the -- I
13 think you know there's been a lot of discovery, and I may
14 have missed a detail. But I don't think anybody has
15 withheld discovery on the theory that the second amended
16 complaint has not yet been granted. I think we're going
17 forward as if it has been, and if you don't, then that's
18 just a bunch of stuff we won't need.

19 Have I got that more or less right?

20 MR. POLAK: One hundred percent.

21 THE COURT: Okay. So assuming then as you said,
22 this docket entry number 113, I believe your motion for
23 leave to file a supplemental first amended complaint, you
24 say that these claims in the proposed supplemental
25 complaint are like and related to or, you know, arise out

1 of all of this common nexus-type language. And even if it
2 did not -- even if it did not meet that, this Court has the
3 discretion under Rule 15 or other rules to allow it?

4 MR. WALLACE: I think that's right. You have the
5 discretion even if it's not related. But I believe as we
6 said in our brief, the key question is as they laid out in
7 the first page of their brief. We are competitors; are
8 they competing fairly and lawfully?

9 We think there are some things they've been doing
10 for a long time that are unfair and unlawful. These are
11 new, and we think they are unfair and unlawful. I do
12 think -- so I think they're related, and I don't think that
13 it is likely to -- I don't think it's likely to delay
14 discovery.

15 We are already looking at each other's finances to a
16 certain extent. There are damages claims in the case.
17 These new intentional interference claims are damage
18 claims, so we're already looking at each other's money.
19 We've been looking at each other's paper, and they gave us
20 62,000 new pages of paper last night. So they're related.

21 And as best I can tell now, we will be able to keep
22 going on these new claims without having to push back the
23 deadlines. What caused us to push back the deadlines is we
24 worked very hard with Judge Ball to try to get this
25 settled, and while we were trying to get it settled, we

1 were not getting discovery done. So that's what pushed us
2 back. I don't think this is going to push it back anymore.

3 I do think, as Your Honor said in the *Dobbs* case, we
4 have one dispute, and the defendant may keep doing new
5 things, but it's still one dispute. And it makes sense to
6 have it resolved here.

7 As Judge Starrett said in the *Ennis* case, you could
8 go file these claims someplace else, but you're going to
9 have to -- they're going to have to be tried somewhere, and
10 judicial economy suggests they should be tried together in
11 the court that already knows what's going on in this case.
12 So I think based on *Dobbs* and *Ennis* and the discretion that
13 you have, you ought to allow us to assert these claims
14 here.

15 They do have one detail, they acknowledge that Honor
16 Society Foundation, which is I believe a charitable
17 organization that is affiliated with Honor Society, will be
18 brought in as a defendant on the supplemental claims
19 because they are using -- Honor Society Foundation is using
20 its website to send out all these surveys to students. So
21 Honor Society Foundation comes in on the new claims.

22 We think we are entitled, based on the new
23 information and the new activity, to bring them in on the
24 old claims. We now have direct evidence that they are
25 assisting Honor Society in this endeavor. Whether or not

1 they've been doing it all along, I don't know, but the fact
2 that they're doing it on the new claims gives us reason to
3 believe they're doing it on the old claims. We think Honor
4 Society Foundation ought to be in on all claims.

5 THE COURT: With respect to those old claims, when
6 did PTK or Phi Theta Kappa first learn that Honor Society
7 might have had a role in any of this? I know there was
8 discovery taken. I presume you learned of at some point in
9 time. The directors or persons involved in Honor Society
10 Foundation were the same as those involved in Honor
11 Society.

12 So with respect to the old claims, did you just
13 learn this after you -- after March or so when you got this
14 information about the records requests that were made by
15 the foundation, or did the parties learn anything about the
16 foundation's, Honor Society Foundation's role in any of
17 this at some point earlier?

18 MR. WALLACE: We have been trying to learn about the
19 foundation. We have learned -- you know, we know it's out
20 there. We have issued -- in the original suit, we issued a
21 subpoena to Honor Society Foundation to try to find out
22 what it was doing and what connection it may have with the
23 activities we are complaining about.

24 So we have known about Honor Society Foundation. I
25 don't think we have known with the clarity that we found

1 out two weeks ago when we see these emails from Honor
2 Society Foundation being sent to students who are members
3 of Phi Theta Kappa. So, yes, we knew something, Judge.
4 Whether we knew enough to sue them earlier is not a
5 question I think I can answer. We know we have enough to
6 sue them now, because we're complaining about the surveys
7 and it's on their email.

8 THE COURT: And with respect to those old claims, if
9 the Court were to allow you to bring those what we're
10 calling "old claims" and "new claims" --

11 MR. WALLACE: Yep.

12 THE COURT: -- against the foundation, will the
13 parties be able to complete discovery under the Myers
14 existing discovery order?

15 MR. WALLACE: I think we can, Judge. Discovery
16 about the Honor Society Foundation has been going on. They
17 are not strangers to this dispute, whether or not they've
18 been parties to it. So we are able, and we should be able
19 to gear up and complete discovery with Honor Society
20 Foundation in time to get ready to try this case.

21 As I say, we've had to deal with them under
22 subpoenas and not under document requests to this point,
23 but we've got some information. And I think when they come
24 into this case, they should be in the position -- I mean,
25 they sent out the emails. They know what they're getting

1 back, so they ought to be able to get it to us pretty
2 quickly I would think. So I don't think adding Honor
3 Society Foundation to all the claims will materially delay
4 the case.

5 I will say lawyers on both sides have been working
6 hard to do discovery. There's an immense amount of stuff
7 out there. Adding these new claims is going to add some
8 new stuff, but we just got 62,000 pieces of it last night.
9 So I think we're on track to get busy. That is why I think
10 we ought to be allowed to assert the new claims, and if you
11 do allow us to assert the new claims, we are here asking
12 for emergency relief in the form of a temporary restraining
13 order.

14 I want to begin by making clear what we're asking
15 for and what we're not asking for. When we filed our
16 complaint, we knew we didn't know everything. We thought
17 we might know more by the time we got here. We know a
18 little bit more, and we'll know a lot more before we try
19 it. But our rebuttal brief I think shaves down what we are
20 asking for now based on what we know in the evidence we are
21 present with today, in the form of Dr. Tincher-Ladner's
22 declaration, presenting to the Court.

23 We do not want to stop all record requests. Until
24 we got this litigation going, we didn't even know they had
25 a records requests about GPA. We don't want to enjoin

1 that. If they want to send record requests about general
2 subjects, that's fine. We do want to stop record requests
3 about Phi Theta Kappa and about Dr. Lynn Tincher-Ladner,
4 that's the sort of record requests we're trying to stop.

5 We don't want to stop them from doing legitimate
6 consumer surveys, if there is such a thing, but we do want
7 them to stop using surveys to make assertions about Phi
8 Theta Kappa and Dr. Tincher-Ladner. You know, would it
9 hurt -- would it hurt their reputation if you knew they had
10 paid somebody \$3 million with student dues? That kind of
11 assertion we don't think is a valid survey. We think it's
12 harassing. We think it ought to stop. But if they want to
13 send surveys that look for the kinds of things that a
14 commercial survey ordinarily would, we're not asking you to
15 stop it. When it happens, we may see it, and we may think
16 there's something wrong with it. But we're not asking you
17 to craft an injunction today that would prevent every
18 survey or prevent every record request.

19 THE COURT: Are the surveys going to -- do we know
20 who the surveys are going to? Are they going to the
21 schools and/or students, or the schools and no students, or
22 just students and no schools?

23 MR. WALLACE: As best we can tell, they're going to
24 students. And of course we've asked who you sent this to,
25 and we don't know yet. That's part of the expedited

1 discovery we're asking for. But they are going directly to
2 students. We know that because we've heard that from Phi
3 Theta Kappa members who are asking us what is this and who
4 wants to know this and what's going on? And apparently
5 there have been a lot of them.

6 In their brief, they give you responses they've
7 received from students. One of them -- I think the highest
8 number they gave was respondent number 3,091, so they're
9 sending out a lot of surveys to a lot of students. How
10 many we just don't know; that's part of the discovery we'll
11 be asking for. So that's what we're asking for.

12 We are not asking for an injunction against hacking
13 into our computers or any of this electronic stuff that you
14 know I can't possibly explain. We think it is suspicious
15 that the computer problems started happening at the very
16 same time the surveys and the record requests started.

17 We don't think suspicion is enough for you to give
18 us a TRO. We think it's enough for you to let us amend the
19 complaint and we'll do the discovery, and by the time we
20 try the case, maybe we'll know whether it's connected or
21 it's not. But I'm not here today to argue that you ought
22 to enjoin them from messing with our computers, because we
23 don't know whether it's them or somebody else. We're going
24 to look and try to find out. So that's what we want:
25 surveys about us and records requests about us.

1 THE COURT: Let me ask you specifically about the
2 surveys about quote/unquote competitor entities that do
3 product research and sort of surveys on their competitors.
4 Tide probably sends something out to people who typically
5 use Gain, you know, so I'm just trying to figure out, you
6 say there were -- we suspect there were at least 3,000
7 survey respondents, number 3,000-something responded.
8 Obviously we know from -- we know that people -- everybody
9 that receives a survey does not respond to it.

10 MR. WALLACE: Correct.

11 THE COURT: So we can reasonably assume I guess that
12 others have received the survey, but what is wrong with
13 respect to putting surveys out there to persons who you
14 either have a relationship or that you don't have a
15 relationship with about what -- you know, the benefits of
16 what they have with their existing organization, for
17 example. What's wrong with Honor Society asking people
18 about, well, you have a relationship with PTK. What do you
19 think about them?

20 MR. WALLACE: Here's what I would say, and I'll use
21 Your Honor's own example. If Tide sent out a survey to
22 consumers that says would it hurt Gain's reputation if you
23 knew their laundry soap turned your clothes green? You
24 know that -- that would do damage. You're not looking --
25 the very formulation of the question is not looking to

1 obtain information. It is to assert information in a
2 deceptive sort of way, and that is the sort of things that
3 they have done here.

4 Would it hurt your opinion of Phi Theta Kappa if you
5 knew these series of five things, and at some point, I'll
6 get to why I think all of those are misleading. We have
7 not alleged them to be defamatory. As the Court knows,
8 defamation is not an easy thing to prove in Mississippi,
9 and you know you're not entitled to say any reasonable
10 person would infer the following from this. If you have to
11 infer it, it's not defamation. It has got to be right on
12 the face. We haven't alleged defamation.

13 We have alleged that what they're doing is
14 misleading, and misleading is part of the tort of
15 intentional -- is one way to commit the tort of intentional
16 interference with business advantage or business
17 relationships.

18 THE COURT: Let me ask you about that, the word
19 "misleading," you know in product liability cases, warnings
20 cases, there are competing persons who talk about what that
21 particular warning says, how it might affect the reasonable
22 consumer, and there are generally disputes about that.
23 People hire experts to talk about whether or not that
24 warning itself is misleading, whether that warning itself
25 does provide the requisite information. Do the -- you

1 know, yes, it's misleading in the words of PTK. I assume
2 when I hear from the Honor Society, they're going to say
3 that's really not misleading. And is that a question of
4 law for the Court, or would that be a question of fact?

5 And if it is a question of fact, can the parties,
6 you know, dissect and reconstruct that particular question
7 and put it before the jury? The competing testimony about
8 whether or not that particular question is or is not
9 misleading in each of the questions that PTK contends are
10 misleading.

11 MR. WALLACE: I don't know that we're going to need
12 an expert. I'm here today to tell you that common sense
13 would suggest that these are misleading.

14 And two things about Mr. Moradian's declaration. He
15 says he stopped using these questions, but he never said
16 why he started. He's never attempted to defend why this
17 would be a legitimate form of consumer protection or
18 consumer inquiry. He just says we don't do it anymore,
19 never explained why he did. And their brief doesn't
20 address whether or not it's misleading.

21 The brief keeps saying, well, it's not false. And
22 for defamation purposes, that might be important if we were
23 bringing a defamation claim, but we're not. It's a
24 question of attacking our customer base, if you would call
25 or say that about these students, with material that is

1 going to mislead them, and that they may have trouble
2 verifying or challenging.

3 I mean, I'm looking at one right here: Does it hurt
4 the reputation of Phi Theta Kappa that a chapter advisor
5 was arrested in February 2024 for allegedly embezzling
6 funds?

7 Now, there are a couple of things about that. If
8 you -- if you look at it from a defamation point of view,
9 that's true, that happened. If you look at it from a
10 misleading point of view, it overlooks things that they
11 learned in Dr. Tincher-Ladner's deposition when I was over
12 here trying that case. We don't pick -- Phi Theta Kappa
13 doesn't pick chapter advisors. These are part of the
14 college's business. If the college is going to allow a
15 chapter on its campus, they pick the advisor, so they have
16 a finger on what's going on. And the funds that she
17 embezzled were not student dues, they were state money.
18 That's why Shad White had her arrested. It was not
19 students' dues, but it was state money.

20 So I didn't sue them for defamation, because there's
21 truth in there. But it's very misleading to suggest to
22 students all over the country that Phi Theta Kappa is
23 careless in selecting faculty advisors, and that those
24 faculty advisors steal members' money; that's not true.

25 I don't know that I need an expert when we try the

1 case to tell you that's misleading, but I think for
2 purposes of a TRO today you can see there is a pretty
3 reasonable chance that we're going to be able to show that
4 students would have and were misled by that.

5 THE COURT: And the TRO would -- because I think the
6 other side says we're not sending that question out
7 anymore. We've stopped sending that question out. The TRO
8 would be one that would affirmatively tell them not to send
9 out anymore.

10 MR. WALLACE: And I can go straight to what I was
11 going to end with on this point, and that's the mootness.
12 The mootness situation, the Fifth Circuit case in *Speech*
13 *First* says the fact that a defendant voluntarily quits
14 doing what he was doing doesn't necessarily mean the case
15 is moot. You have to be absolutely clear that it's never
16 going to come back.

17 And the Fifth Circuit had three tests on that:
18 Whether there's a controlling statement of future
19 intention. Now, all Mr. Moradian says in paragraph 56 is
20 he's not doing it anymore. But he makes no promise never
21 to do it again, and there's certainly no court order on it.

22 The second point in *Speech First* is suspicious
23 timing. Mr. Moradian stopped doing this after we
24 complained to his lawyers. He didn't just wake up one
25 morning and say, you know, that's a bad idea. I shouldn't

1 have done it. I'm going to quit. It happened immediately
2 after the lawyers were complained to and maybe it will
3 start again when nobody's looking.

4 And the third point is whether or not the defendant
5 is continuing to defend its conduct. If a defendant comes
6 in here and says, well, we won't do this anymore, but we
7 were 100 percent right. We had every right to do it.
8 We've never done anything wrong. That's in their brief,
9 they say we're not going to do it, but we have every right
10 to do it. We didn't do anything wrong. And if that's
11 their attitude, we can't rest with any confidence that they
12 will never do it again. It's not absolutely clear. We
13 think the *Speech First* case answers Your Honor's question
14 about, you know, will they do it again.

15 Let me tell you -- and I was going to start this by
16 telling you what I think they're up -- why they're doing
17 this from facts we know and facts we don't know. These
18 surveys, according to Mr. Moradian's declaration, started
19 on March 4th. We don't know when they started doing record
20 requests. We started hearing about it at that time. His
21 declaration doesn't tell us when he started doing those
22 requests.

23 We don't think it's an accident that they started
24 this four days after Judge Ball retired. Judge Ball had
25 tried to settle this case. It didn't work. We didn't

1 agree with them, so we're back litigating again. But Judge
2 Ball had restricted the scope of the discovery. They sent
3 a Rule 45 subpoena to an outfit called NAVEX that we used
4 to investigate and keep track of any allegations about us
5 that we ought to know about. Judge Ball says don't bother
6 the other people. You can get that from Phi Theta Kappa;
7 leave them alone.

8 And more importantly for purposes here, because this
9 is a reputation case, we are alleging their unfair and
10 unlawful competition is damaging our reputation. Judge
11 Ball says you're entitled to see what their reputation is
12 that is out there in public, because what people say about
13 them in public effects whether their reputation has been
14 damaged. But what you're not entitled to do is turn over
15 rocks on the inside and look for things that the public
16 doesn't know yet; that's got nothing to do with their
17 reputation.

18 THE COURT: Let me ask you about the NAVEX. PTK,
19 Phi Theta Kappa I guess I should say, hired NAVEX to do
20 some sort of internal research?

21 MR. WALLACE: It's not a research outfit. But if
22 anybody's got -- if anybody wants to file complaints with
23 us -- let me ask Mr. Polak.

24 THE COURT: That's fine. That's fine. I just want
25 to make sure I'm clear about it, and I appreciate you

1 bringing that to my attention with respect to what the
2 parties knew prior to March 4th. And apparently the
3 subpoena was sent to NAVEX --

4 MR. WALLACE: Sometime ago.

5 THE COURT: -- and Judge Ball quashed the subpoena,
6 I guess?

7 MR. WALLACE: And I'm not telling you I know
8 everything NAVEX does. They may do a lot of things for us.
9 But what they wanted to see is did we have any record --
10 did NAVEX have any records of people, of students
11 complaining about us or anybody complaining about us. And
12 we said we know about that; they keep those records for us.
13 You ask us, and we'll give them to you if Judge Ball says
14 so.

15 THE COURT: Thank you. All right. You may proceed
16 then.

17 MR. WALLACE: So now Judge Ball's gone, and this
18 starts immediately. And when we tell their lawyers, when
19 we tell Honor Society's lawyers about it, some of it at
20 least stops immediately.

21 Now, why are these two things connected? The
22 records requests are going to the colleges, and they're
23 asking for everything that has to do with Phi Theta Kappa.
24 But, specifically, they specifically include lists that are
25 going to Phi Theta Kappa. Now, the lists we get from the

1 colleges that we have, as our complaint says, enforceable
2 agreements with, the lists we get from them are kids who
3 had good grades last semester. When the grades come out,
4 the college looks at it, and says these are the kids who
5 qualify to be Phi Theta Kappa, and they send us the lists.

6 Now, presumably those lists would be produced under
7 the records request, at least by some people, and when they
8 get those lists, then they know where to send the surveys.
9 We know from discovery that they purchased lists of young
10 folks' emails. They send out millions of invitations to
11 join Honor Society. But if what you want to do is compete
12 with Phi Theta Kappa, as their brief says and as
13 Mr. Moradian's declaration says, it really helps you to
14 have lists of people who have been invited to join Phi
15 Theta Kappa. So the records requests helps them to target
16 the surveys; that's how these two things fit together.

17 And indeed in paragraph 52 of Mr. Moradian's
18 declaration, he says we send these surveys to people who
19 have been confirmed as junior college students. Well, he
20 doesn't say how he's confirmed it, but if he's got the
21 lists he's asking for, that's a pretty good confirmation.

22 Now, here's why it's a problem particularly now.
23 Most places ended the fall semester just before Christmas.
24 It takes a while to get the grades together. Sometime
25 early in the new year, maybe February, we're going to get

1 lists from colleges that says here are the kids who are
2 eligible to join. And some colleges notify the kids
3 directly. Some colleges send us the lists, and we send out
4 invitations to the kids. And that has been going on during
5 February and March.

6 March is the time of year, because of this process,
7 that we pick up the greatest number of new members. And as
8 we say when we get to the damages point, membership is down
9 15 percent this March. One reason it's big in March is we
10 have the national convention in April. This week -- this
11 week it's the first -- it's the first week in April down in
12 Orlando. We need to -- these kids, if they want to take
13 advantage of the college fair and the other things we
14 provide at the national convention, they need to make up
15 their minds and decide to get in.

16 Now, if you're a kid down the road at Utica or back
17 in my neck of the woods in Perkinston or over here at
18 Scooba and you're trying to make up your mind, because
19 you've got limited resources and limited time, is Phi Theta
20 Kappa something that can do me some good? It's very
21 important for them to be looking at that right now, and
22 it's very important for them to be able to look at that
23 right now without any misleading information that is being
24 sent out in these surveys by -- by Honor Society.

25 They claim they have a First Amendment defense with

1 regard to the surveys. They don't say there's a First
2 Amendment defense with regard to the records requests.
3 They say there's one with regard to the surveys.

4 You've dealt with that before is the *Bond Pharmacy*
5 case, and you know that commercial speech is not protected
6 when it's misleading. I've already talked to you about how
7 some of these surveys are -- some of these survey questions
8 are misleading. They talk -- one of them says, "Would it
9 hurt your reputation if the last director got a \$3 million
10 golden parachute when he left?"

11 I don't know how the federal government worked when
12 you left the U.S. Attorney's Office. I know how it worked
13 when I left congressional staff. They take money out while
14 you're working. You've earned the money. They put it
15 towards your retirement, and when you leave, when you're
16 not going to get any retirement, they give you the money
17 back.

18 In my case, I wouldn't have called it "a golden
19 parachute." But I had earned it, and I was happy to have
20 it. And that is what was happening here. And they know
21 that because they were told that during the deposition, and
22 there's nothing to the contrary. We don't pick the chapter
23 advisors --

24 THE COURT: That deposition occurred when? Do we
25 know?

1 MR. WALLACE: During the -- the last week of
2 February, I think. Yeah, because I was -- I was over here
3 doing the redistricting trial, so I wasn't there. But all
4 of these things in the -- in their questions were --

5 THE COURT: So they learned about it. Presumably
6 Dr. Tincher-Ladner was questioned about it during the
7 course of this case in the discovery in the deposition, --

8 MR. WALLACE: Yep.

9 THE COURT: -- and information taken from that was
10 used, in part I guess, to construct a survey?

11 MR. WALLACE: I think that's right. I'm not
12 accusing them of taking anything in discovery to -- that
13 would have violated any orders. Some of this -- some of
14 what they asked about was in newspapers, could have been
15 gotten legitimately. But newspapers, as Your Honor may
16 have noticed, are not always complete and clear about all
17 the facts. So they had a deposition where they had the
18 opportunity to and did get complete clarity on the facts,
19 and then they went out and did it anyway.

20 They say we're lying about being the official junior
21 college honor society. We've given them the minutes from
22 1929 when the Junior College Association made us official.
23 If they don't think the minutes are any good, we know
24 they've got subpoenas. They can ask the Junior College
25 Association whether we're official or not.

1 So this is all commercial. They admit in their
2 complaint in paragraph -- not their complaint,
3 Mr. Moradian's declaration, paragraph 50 and paragraph 83,
4 they say this is commercial. This is a key part of our
5 commercial business. Because it's commercial, their First
6 Amendment protection is limited, and it doesn't protect the
7 sort of misleading things they're sending out to our
8 students.

9 For that matter, malice gets no First Amendment
10 protection. The torts we've alleged under Mississippi law
11 require malice. They define malice perhaps differently
12 from what the Supreme Court has done in the defamation
13 cases, but this isn't a defamation case. Mississippi
14 understands that you just can't go around punishing people
15 for what they say. You have to have a high degree of
16 fault. That's what we've alleged; that's what we think we
17 can prove.

18 And I was surprised that one of their cases, a Fifth
19 Circuit case, *Test Masters* vacated a -- vacated an
20 injunction -- and this is the part they like -- that told
21 the defendant you can't contact the -- I'm sorry. Told the
22 plaintiff I think in that case. But in any event, they got
23 an injunction that said you can't contact the other party,
24 you can't contact their employees, you can't contact
25 anybody associated with them ever about anything. And the

1 Fifth Circuit said, no, that's way too broad. We're not
2 asking you to do anything that broad.

3 The Fifth Circuit didn't throw out the injunction.
4 They narrowed the injunction, and they said that you can --
5 First Amendment notwithstanding, you can enjoin harassing
6 communications, and we're going to revise the injunction to
7 say -- not to say you can't talk to anybody at any time,
8 but to say you can't use it for harassment.

9 We certainly think -- we think that what's going on
10 in this case is sort of a bank-shot harassment of us, among
11 other things. They ask questions to the colleges, the
12 colleges complain to us. They send surveys to our members,
13 the members complain to us. There's a lot of it out there,
14 and I think that's the sort of harassment that *Test Masters*
15 says receives no First Amendment protection.

16 THE COURT: Let me ask you that we believe -- I
17 mean, I think you've asserted that the information went out
18 on or about March 4th. And it probably takes one hit of a
19 button after all this stuff has been put in some sort of --

20 MR. WALLACE: Yeah.

21 THE COURT: I think there was specific requests from
22 these institutions to put it in an Excel spreadsheet, for
23 example, and I assume, you know, with one hit of the
24 button, the letters could go out, the surveys could go out
25 to hundreds of thousands of individuals.

1 And I presume the surveys are not being responded to
2 all at the same time. So if I got one in Perkinston and if
3 I got one over in Raymond, I'm just now getting it, or I'm
4 just now turning my attention to it. I'm back from spring
5 break. I look at the survey, and I respond.

6 I guess my question would be, basically, the horse
7 is out of the barn; right? So all of this information is
8 already out there to presumably at least 3,000 people. We
9 suspect more; right?

10 MR. WALLACE: We do.

11 THE COURT: Okay. So it's already out there, and
12 now we're waiting on results or responses to those surveys.
13 I mean, what could the -- as I said, the horse is out of
14 the barn. What is it this Court could do at this point?

15 MR. WALLACE: There are more horses all the time.
16 There are some community colleges out on the west coast
17 that are on the quarter system. They are finishing up the
18 quarter in March. We'll get lists from those colleges in
19 April, and we will send things out to them. And unless you
20 stop them, they will be pushing another button and sending
21 more information, more assertions out to more horses.

22 And there will be a lot more people before this case
23 is tried because when the -- with most places under the
24 semester system, you're going to get the grades -- they
25 will finish in May. You'll get the grades in June. We'll

1 get emails out to people in July. And when they get those
2 lists, they're going to have those same questions or
3 questions like them out there to all those new horses.

4 So, no, I'm not -- certainly a TRO isn't going to
5 fix everything. That's why we're going to have a damage
6 trial. But the TRO can stop the bleeding.

7 THE COURT: Well, will the damage trial -- at the
8 end of the day with the damage trial, I assume you won't be
9 requesting sort of injunctive relief or equitable relief.
10 You'll be asking for some amount of money.

11 MR. WALLACE: We are asking for some amount of
12 money, but I suspect we'll be asking for a permanent
13 injunction at the same time.

14 And that's one of the differences between this and
15 the *Bond Pharmacy* case that Your Honor had. Your Honor
16 said, well, if you've lost business, you can contact the
17 doctors who don't do business with you anymore. You can
18 find out whether the letter had anything to do with that,
19 and you can look at the kind of money you used to make from
20 them. And we can add it all up, and you can get a nice big
21 check.

22 Where damages will provide a full remedy, then
23 ordinarily that's what the Court does. The difference
24 between us and the pharmacy in that case is we're not in
25 the business of cashing checks. We are a nonprofit

1 institution. We are in the business of helping kids in
2 junior college, and if these kids are driven away or
3 deterred from joining Phi Theta Kappa, we can't help them.
4 More importantly, they can't get the help that we've been
5 providing to their parents and grandparents for 100 years.
6 I don't know how you fix that. I don't think you can fix
7 that. So I think that's a huge reason why damages are not
8 going to be sufficient in this case.

9 I'll get to irreparable injury in a minute; although
10 I think I've just talked about irreparable injury. But I
11 do want to talk about these public records requests, which
12 they quite reasonably don't claim to be a constitutional
13 right, because it's not. There's no First Amendment right
14 to get into the government's filing cabinets. If they did,
15 you'd be hearing from people all the time, but you're not
16 under FOIA.

17 But the Government can open the filing cabinets on
18 certain conditions, and so there are statutory rights that
19 get you into the government's papers. And they differ in
20 every case. Every state has a different way of doing
21 things. The only one they cite to you is the Mississippi
22 Code, which, again, is interesting because as far as we
23 know, they haven't sent any -- they haven't sent any
24 document -- any records requests to Mississippi.

25 I don't think that's a coincidence either. The

1 first order you entered in this case decided we didn't have
2 personal jurisdiction over Mr. Moradian. I think he's
3 being very careful not to do anything in Mississippi if it
4 would bring him back in. But he's got free rein in the
5 other 49 states, and he is sending these all kinds of
6 places.

7 But Mississippi is a good example of why nobody has
8 an unrestricted fundamental right to get anything that
9 happens to be in a government filing cabinet. Our statute,
10 25-61-9, says that the materials and information that the
11 government gets from private parties on the outside is not
12 necessarily public.

13 When a government agency in Mississippi gets the
14 request: Give me everything you've got from Phi Theta
15 Kappa. The agency is supposed to call Phi Theta Kappa.
16 We've got 21 days to go to court and to establish, which we
17 would do very easily if they were just asking for it in
18 this case. We would just go see Judge Myers, and we'd talk
19 about what they're entitled to and what they're not. But
20 if you use records requests, we at least have the
21 opportunity to go to court and stop them, so there's not an
22 unqualified right to get any records request at any time.

23 I don't know what the law is in the other 49 states.
24 And presumably they don't know either, because they haven't
25 said anything about it in the brief. By the time we try

1 this case or by the time we've come back for a preliminary
2 injunction, maybe they will do it. Maybe they'll find some
3 places in this country where the people who provide private
4 information have no right to protect themselves once the
5 Government gets it, but I doubt it. I don't think there's
6 anybody out there.

7 They keep calling it public information. If it
8 comes from us, it's private information that happens to be
9 in the hands of the government. They don't have an
10 absolute right to go get that from anybody.

11 THE COURT: So presumably, I assume the public
12 entity which receives the request, they look at it to
13 determine whether or not they can turn over the stuff.

14 So wouldn't the burden be on the public institution
15 to make sure it doesn't give out stuff that it is not
16 required to give out under that state's public records
17 thing?

18 MR. WALLACE: You would hope so, Your Honor. I
19 intend no disrespect to anybody to say that most junior
20 colleges, community colleges are small institutions in the
21 business of teaching kids. They don't have full-time
22 lawyers on staff.

23 In Mississippi I suppose if they had a problem, they
24 would call up the Attorney General, and say what do I do
25 with this? But all of that depends on who gets the

1 request, and it depends on who gets the request identifying
2 a problem on which they do need legal advice and then
3 figuring out how and where to go get it.

4 And it seems, based very quickly on what they sent
5 us after I went to bed last night, some of the things
6 they've gotten back are emails between the college and the
7 students with students' names, students' emails.

8 I don't claim to know a lot about FERPA, but I think
9 I know that's protected. You are not supposed to be -- I
10 mean, my heavens, the trouble I had getting my kid's grades
11 from the schools was pretty strong. I hope they're not
12 sending out the email communications. I think that's
13 illegal under federal law, but apparently somebody did it.

14 So I don't think you can ask for stuff, ask for all
15 of this stuff, including lists that you know they shouldn't
16 be giving it to you, and say, well, it's not my fault they
17 don't know the law.

18 Now that's -- again, once we've gone through these
19 62,000 pieces of paper we got last night, we're going to
20 know more about that. But I don't think it's fair right
21 now to say they can ask for things they know they're not
22 entitled to, that Judge Ball has told them they're not
23 entitled to, just because, well, the burden is on the back
24 of the junior colleges to figure out the law. I hope
25 that's not the case.

1 Going the long way around the barn, I've finally
2 gotten to the *Canal Authority* factors. I do think we have
3 a likelihood of success on the merits of our interference
4 with business advantage claim.

5 At this point, we're not entitled to a TRO on our
6 tortious interference with contract. The law in
7 Mississippi seems to be you need to prove that you've lost
8 a contract. There may be colleges out there that have
9 already said we don't want to fool with Phi Theta Kappa
10 anymore, but they haven't told us.

11 When the colleges on the west coast start deciding
12 whether or not to send us their winter grades, you know,
13 then maybe we'll know whether we've lost a contract. We
14 don't know it yet. I'm not asking you to grant a TRO on
15 something where we're not in a position to prove it to you.

16 But I think we have offered plenty of proof on the
17 question of malicious interference -- of interference with
18 business advantage. These communications, they were
19 intentional. They're proud of them. They're here telling
20 you they were intentional; we did them on purpose. And
21 both the records requests and the survey targets Phi Theta
22 Kappa on the face. The key question in Mississippi -- and
23 it's the definition of malice in Mississippi -- are you
24 intending to damage somebody without justifiable cause?

25 And it's not justifiable cause enough to say, well,

1 we're competitors. We want market share, we'll take it
2 from them. Okay. That's fine when you do it fairly. But
3 under the Mississippi Supreme Court's MBF case, it's not
4 fine when you go beyond the realm of legitimate
5 competition.

6 They took their -- aside from the timing we've
7 already talked about, on the document requests, the records
8 requests, they took pains to make sure nobody would know
9 they were coming for Honor Society. They were sent by one
10 of their employees, Mr. Asari. He did it on his own email.
11 He's got an Honor Society email; we've seen that in
12 discovery. But the document requests do not purport to be
13 from Honor Society. They don't say anything about Honor
14 Society. It's this unexplained guy out there somewhere
15 that wants to know about Phi Theta Kappa. And if you
16 thought you were doing right, you wouldn't go to the effort
17 to hide who you are.

18 And if they really wanted this stuff, the easy way
19 to do it is to file one request with us: Give us all your
20 communications with all of the junior colleges in the
21 country. They didn't do that. The only imaginable reason
22 for not filing one request instead of hundreds and
23 thousands is that we would have an opportunity to defend
24 ourselves before Judge Myers. So they've decided to take
25 that off the table by going straight to the colleges.

1 And, again, they did the survey at the same time as
2 the record requests. They don't even suggest -- what is
3 it? -- a legitimate competition purpose for the surveys.
4 Why would you say, you know, would it hurt the reputation
5 of Phi Theta Kappa if so and so -- they're not trying to
6 find out about the market. They're trying to poison the
7 market.

8 The irreparable injury, I've already told you why
9 damages won't work. The *Daniels* and *Spiegel* case from the
10 Fifth Circuit say that reputational harm may be -- may be
11 irreparable. That's a good basis for issuing injunctive
12 relief.

13 Also, the *Multiplan* case says it's irreparable when
14 damages are hard to quantify. It's not *Bond Pharmacy* where
15 you've got to contact 50 doctors and say why aren't you
16 doing business with us anymore. We've got thousands of
17 kids who never -- hundreds of thousands who may never
18 choose to do business with us, because they've been scared
19 off by this survey.

20 The third test is comparative injury, how is this
21 going to hurt them? We're being hurt if only by the time
22 we have to spend to explain to our colleges what's going on
23 and to explain to the members who contact us what's going
24 on. The TRO is not going to hurt them in any way.

25 If they want to file a record request about the

1 junior college market, we're not stopping them from doing
2 that. We just say don't talk about Phi Theta Kappa.

3 If they want to do a survey for legitimate
4 competitive reasons, you know, we're not asking you to
5 enjoin it. When its out there, we may look at it, and we
6 may have a problem with it, and we'll come see you. But
7 that's not what today is about.

8 So we're being injured. Where is the injury in
9 telling them for the next 14 days they need to stop? And
10 they say, you know, public interest. They say these are
11 public documents. The public is helped when we get public
12 documents. Well, the key is they're private documents.
13 They're private communications with a private party, and if
14 they get those before we know about them and before we've
15 had a chance to be heard, then we've been really injured.
16 I've told you --

17 THE COURT: Let me ask you about this, because the
18 other side is certainly going to have an opportunity to
19 respond.

20 MR. WALLACE: Oh, yeah.

21 THE COURT: But, again, those surveys have already
22 been sent out. If the Court were to grant you the relief
23 you want today, that would stop I guess for the next
24 14 days, or broadly throughout the course of this
25 litigation, the Court says no more surveys can be sent out

1 in the form in which they currently are.

2 MR. WALLACE: Right.

3 THE COURT: Would that -- does that satisfy the sort
4 of irreparable harm or the injunctive relief that Phi Theta
5 Kappa would need to stop the bleeding as you might have
6 said?

7 MR. WALLACE: I think that's the best you can do
8 based on what we know now. When we get the discovery that
9 I'm just about to ask for, we may be back here either at a
10 preliminary injunction or at trial and tell you how to
11 stitch up the bleeding. But we just don't know how bad the
12 wound is right now.

13 We may get to the point where the Court ought to
14 tell them to contact other people and to say we're sorry we
15 sent you this; pay no attention to it. That's something
16 the Court could do. I'm not asking you to do that today.
17 I'm asking you to tell them not to make it any worse, and
18 then to let us have our discovery.

19 But I want to say one thing before discovery. If
20 you -- I think this is best treated as a matter of
21 substantive law. We have a valid claim under Mississippi
22 law, and you have authority under federal procedure to
23 grant us emergency relief subject to changing your mind
24 when you see what comes down the road. But we also think
25 that we could be -- if Your Honor has doubts about any of

1 those questions, we could be entitled to a Rule 26
2 protective order.

3 It is not often that courts are asked to issue a
4 Rule 26 protective order about things that are going on
5 outside of discovery. It is not unprecedented. It has
6 happened in cases where the court decides you're avoiding
7 the decisions that have already been made by this court,
8 and we're not going to let you do that.

9 We have cited the *Heinrich* case where the party --
10 where the plaintiff had asked the magistrate to reopen
11 discovery, the magistrate had said no, so they sent out a
12 Colorado Records Act Request. And the Court says I'm
13 sorry; I'm not going to say you're never entitled to do a
14 records request, but when the judge has told you discovery
15 is over, then I'm going to tell you discovery is over. And
16 I'm not going to let you evade that by using other legal
17 mechanisms to get evidence.

18 Arkansas did the same case -- the same thing in the
19 *Hartman* case we've cited. And the judge says, again in
20 *Heinrich*, says I don't have anything that explicitly tells
21 me I can do this, but I don't have anything that tells me I
22 can't. And the rule tells me to protect people from being
23 harassed, and I see these people are being harassed, and I
24 want it to stop. So I think you've got that authority, or
25 at least there are a couple of District Courts that think

1 you've got that authority whether or not you ever get to
2 that TRO.

3 THE COURT: You mentioned you got 62,000 pages
4 yesterday. If the Court were to grant Phi Theta Kappa's
5 request today and say at least for the next 14 days or
6 until we get a complete handle on this, which may extend
7 through the current discovery deadline --

8 MR. WALLACE: Right.

9 THE COURT: -- that any -- if the Court were to say
10 that no more future surveys to be sent out in the form in
11 which they've been sent out. But any responses received by
12 Honor Society in response to those requests, they're a part
13 of discovery in this case, and they will have to be given
14 to Phi Theta Kappa.

15 I mean, is that reasonable?

16 MR. WALLACE: I think that's right, Judge, and that
17 gets us to our request for expedited discovery. The
18 lawyers have provided us some of the information we've
19 asked for, not enough for us to evaluate it now.

20 Their only objection to expedited discovery is they
21 say we don't have a right to a TRO. Well, we've pled a
22 case. If we're entitled to amend our complaint, we're
23 entitled to some discovery about that complaint sometime.
24 It's only a question of how fast. And you can set a
25 preliminary injunction in two weeks, and we can get

1 discovery between now and then. If they're willing to have
2 a TRO remain in place longer, we can do -- do discovery a
3 little more leisurely.

4 They have not objected to the substance of
5 discovery. We've attached to our motion this is what we
6 want to know, and their only argument is you can't get it
7 because you can't get this TRO. We think we have pled a
8 claim. We're entitled to discovery at some point, and if
9 the Court is going to allow us to go forward on a
10 preliminary injunction, then we need it before we get to
11 that point.

12 THE COURT: If the Court allows you to do your
13 supplemental amended complaint and move forward, will there
14 be a need for any TRO? Other than the TRO which says
15 change the survey or don't send out those specific
16 questions anymore.

17 And under the existing discovery order that Judge
18 Myers has in place, the parties have until August to do all
19 the discovery that they need to do based on any claims that
20 the Court -- any claims or counter claims that are part of
21 the thing. And obviously the parties know that when August
22 rolls around, if the discovery has not been completed,
23 they're probably going to ask Judge Myers, and say, look,
24 it's August now. We believe we can get it done by October
25 and that might effect the trial date. Judge Myers, please

1 let us out of that trial date. And you know I'm just
2 asking, if the Court allows you to file your supplemental
3 amended -- what was called a supplemental amended complaint
4 to bring in all these issues here, if it were to allow the
5 Honor Society to bring whatever claims that they thought
6 were necessary, you discover all of this stuff, you tee
7 everything up for trial. Short of trial, you tee
8 everything up for summary judgment.

9 Does that not cure, but isn't that the logical
10 progression?

11 MR. WALLACE: I mean, I think that's the logical
12 progression. I think we need some kind of restraint from
13 the Court at this point whether it's a TRO, whether it's a
14 Rule 26 protective order to say that these surveys that are
15 targeting Phi Theta Kappa and Dr. Tincher-Ladner need to
16 stop.

17 It's a marketing case. There may be a marketing
18 expert that needs to do a real survey, and we're not
19 telling them -- we don't want you to tell them they can't
20 do what they need to do to get ready to try the case.

21 But they don't need to tell kids all over the
22 country, would it hurt the reputation of Phi Theta Kappa if
23 you knew X, Y, and Z? Of course it would, that's why
24 you're telling them, so I think that needs to stop. I
25 think the records requests at this point need to stop. All

1 of that can be funneled through Judge Myers, and we can get
2 ready to try this case. So I don't think we need as broad
3 a TRO as we thought when we filed it, but I think we need
4 these things that target us to stop.

5 You know, at some point, and I don't know whether
6 this is in the TRO or whether this is down the road, but I
7 talked to you about the nature to bind up the wound. You
8 may not be ready to do this today. You may want to do it
9 if and when we get to the preliminary injunction stage.
10 But we would very much like them to tell these colleges
11 that are getting these requests and are calling us on the
12 phone: Dear college, we're sorry. You can stop work. You
13 don't need to respond to this.

14 We'd love to have that today. If Your Honor doesn't
15 feel comfortable with that today, we can talk about it, and
16 probably will, between now and the trial. But the key
17 thing is don't make it any worse.

18 What I want to do, if I may, is sit down.
19 Mr. Polak, I'm not going to tell you he's been through
20 62,000 pieces of paper, but he knows more about it than I
21 do and knows more about what we need to do to get ready for
22 trial. And I'd like to hand that over to him for just a
23 minute and then --

24 THE COURT: And then we'll take a break for the
25 court reporter, and then we'll return and hear from the

1 other side. Thank you, Mr. Wallace.

2 MR. WALLACE: Thank you.

3 MR. POLAK: Good morning, Judge.

4 THE COURT: Good morning.

5 MR. POLAK: Jonathan Polak for the Plaintiff PTK and
6 Counter Defendant Dr. Tincher-Ladner. I'll be quick about
7 the documents. 62,000 seems like a big number. It's one
8 of these situations where we got a lot, but we didn't get
9 very much; that's the problem.

10 I think from the papers you'll recall a person by
11 the name of David Asari. He was the primary I think sender
12 of the records requests, these public records requests.
13 Out of 62,000 pieces of paper, there are four -- we have
14 the ability to search this stuff online. There are four
15 emails that reference his name. So out of all of this they
16 gave us only four match it, so what does that mean?

17 They did not give us two of the things that we've
18 been asking for since the beginning, since all the way back
19 to I think March 6th or 7th: Tell us the number of
20 colleges you sent this stuff to. In other words, how many
21 of these emails did you send, and what are the colleges you
22 sent them to? So we can understand the scope and volume.

23 There are a little less than 1,500 community
24 colleges in the United States. We know that as late as
25 yesterday, because I had a conversation with somebody at a

1 small community college, they have received not one, not
2 two, not three, not four, but five records requests, many
3 of them overlapping. That means that there could be as
4 many as -- because you're right, it's not hard to do the
5 email send; right? You have your spreadsheet, you pop it
6 into the email server, boom, you can send out 1500 of these
7 real quickly.

8 And so what do we know? We could have literally a
9 disaster on our hands in terms of the high volume of
10 documents. We don't have that stuff.

11 So I want to make it clear that in terms of what it
12 is we've been asking for since the beginning, from the very
13 first conversation that I had with Mr. Newman's colleague,
14 Mr. Linke, and I said tell us -- we just found out about
15 these records requests. Tell us who it is you've sent this
16 stuff to. We don't even -- and their response was we don't
17 even know that that happened. Their own lawyers didn't
18 know. But that's why we've been asking for this.

19 And why is it they gave us these documents last
20 night? It wasn't because of the fear of the expedited
21 discovery that we've asked for, because they might come up
22 here and say we don't need to do the expedited discovery.
23 We're giving these things already. Well, they're not.

24 These are all because we asked them to give us, a
25 long time ago, all documents referencing Phi Theta Kappa.

1 We asked for that back in 2022. Those records requests
2 have been or Rule 34 requests have been outstanding.

3 So what do we know? We know that they started this
4 apparently at some point in early March. They've had all
5 this time. They had an obligation to timely supplement
6 their discovery; they did not.

7 I'm going to give the lawyers credit here. They
8 didn't know, because their own client didn't tell them they
9 were going through this process. But they had an
10 obligation to give it to us, and I think they've hustled to
11 get everything. But it's not everything. We still don't
12 have copies of the records requests. We don't know how
13 many were sent to each one.

14 A huge category of documents that are still
15 responsive to our Rule 34 request are going to be the
16 planning documents for the survey. What was Mr. Moradian
17 talking about with Mr. Asari when they're sitting there
18 scheming and plotting to send literally possibly tens of
19 thousands of public records requests and potentially
20 millions, potentially millions of emails for these surveys,
21 what were their motivations for doing so? We don't have
22 that.

23 That is topics I believe -- well, I don't know the
24 exact numbers, but you have the requests for production we
25 are asking for. We also have 30(b)(6) notices that we

1 attached. That is what we're after, Your Honor. We want
2 to know what happened, but we also want to know why. And
3 it's the answer to the why question that I think is super
4 important.

5 My colleague, Mr. Wallace, was explaining to you all
6 of the reasons why we think this was not ordinary course of
7 business FOIA requests. These were maliciously designed to
8 cause colleges out there, who are our lifeblood for emails,
9 to reconsider whether it is really worth it to have a
10 relationship with Phi Theta Kappa. And for the students
11 who received those surveys, we have no information, from
12 what I can tell, that will tell us the number of surveys
13 that were sent. We have survey responses, but we don't
14 know the total number of surveys that were done.

15 Now, they will tell you that they terminated it;
16 it's gone. But as Mr. Wallace was telling you, there's no
17 representation it's not going to happen again, and we do
18 see a connection between the emails they're getting on the
19 one side from the public records requests and the emails
20 that go out with the survey on the other side. They're
21 inextricably intertwined. So that's what we're asking for.

22 THE COURT: Let me ask you this, Mr. Polak. You
23 said there were four documents as far as you could tell
24 that link Mr. Asari with somebody else. What do the other
25 62,000 pages look like? What type of information is that?

1 MR. POLAK: We have not been able to chew through
2 those as much as we would have liked. I don't know if my
3 colleagues on the bench back there have nodded off, but
4 they were up all night looking at this stuff. And we can
5 only chew through so much of it.

6 But I believe that it has -- there are some
7 spreadsheets. I think there was some number of
8 spreadsheets. Thirty or 40 is the number that comes to
9 mind from an email I read this morning, but it's in that
10 range. Those spreadsheets are going to include the email
11 addresses from some of the schools that have responded.
12 Mr. Wallace was referring to that. There are probably
13 going to be emails back from the colleges where there is
14 this exchange.

15 But what's curious about it is that if Mr. Asari is
16 only mentioned four times, I doubt that there's a whole lot
17 of communications that they've produced there, and that's
18 what we want to see.

19 THE COURT: Okay. Now, let me ask you this. Of
20 course Phi Theta Kappa has relationships with junior
21 colleges and community colleges. Am I correct then, and
22 should I assume that those are the only persons Phi Theta
23 Kappa has relationships with, junior and community
24 colleges?

25 Because I think Honor Society's affidavit suggests

1 that persons are eligible to be members of the Honor
2 Society who might be in four-year colleges and
3 universities, and there may have been information sent to
4 the four-year colleges and universities, which would not be
5 a community college.

6 In discovery, I know Rule 26 is broad, anything that
7 might lead to discoverable -- I guess that's still -- the
8 magistrate judges deal with --

9 MR. POLAK: Yeah.

10 THE COURT: -- discovery issues.

11 MR. POLAK: Right. It's a good question.

12 THE COURT: But tend to get to matters that are
13 material or discoverable. Is Phi Theta Kappa taking the
14 position that it would not be entitled to whatever
15 information that Honor Society might have sent to students
16 enrolled in public or private four-year colleges and
17 universities?

18 MR. POLAK: I think the answer is we very much would
19 have an interest in that, and the reason why is those are
20 alumni of ours. And I don't know that there actually is --
21 if "alumni" is a good word to identify --

22 THE COURT: For persons who have graduated --

23 MR. POLAK: Correct.

24 THE COURT: -- from the community colleges who would
25 have --

1 MR. POLAK: Correct.

2 THE COURT: Some of whom might have received
3 scholarships or would receive scholarships in the future.

4 MR. POLAK: Once in Phi Theta Kappa, always in Phi
5 Theta Kappa, because there's only a onetime fee to join.
6 Unlike Honor Society which charges credit cards every
7 other -- every six months.

8 Once you're in Phi Theta Kappa, you're in and so --
9 and many of those students, not all, but many come to the
10 convention.

11 Many of those students proselytize the virtues and
12 value of their own membership in Phi Theta Kappa. Some of
13 our best PR comes from people who once were in our
14 organization as an active member as opposed to someone who
15 has graduated and been successful transferring from
16 community college to do that.

17 So I just got a note here. There are -- it's going
18 back to your question that you asked about what else is in
19 those documents. There are communications that include
20 confidential student communications. Student
21 communications that were produced, I think, by the
22 colleges. So as a part of these records requests, right,
23 they're saying give me all the communications that speak in
24 any way to PTK or Dr. Tincher-Ladner, including but not
25 limited to email addresses.

1 So I don't want the Court to have the understanding
2 that the only focus of these records requests were email
3 addresses. It's a big part of it, a big reason why they're
4 asking for it.

5 But they also were asking for this other bit where
6 let's say, for example, this is an issue we dealt with in
7 the NAVEX situation. A student who's a chapter member and
8 a member of Phi Theta Kappa on Campus X has a disagreement
9 with their chapter advisor. A disagreement with something
10 that happened in class that day, whatever it might be, and
11 they contact their Phi Theta Kappa chapter advisor about
12 it. Totally private, totally anonymous -- well, not
13 totally anonymous, but totally private.

14 There's an expectation of confidentiality I'm sure
15 with that student because sometimes they act -- these are
16 kids, and they're going to be vulnerable sometimes in ways
17 that adults are not going to be. And that was kind of what
18 we dealt with with NAVEX, because in the NAVEX situation,
19 we had a bunch of complaints -- well, not a bunch, that
20 overstates it. We had a number of complaints that they
21 were wanting to get that were totally private. Many of
22 which were anonymously submitted, and there's a reason why
23 they were anonymously submitted.

24 Judge Ball was like, look, you could get these. You
25 don't have to go to NAVEX to get them. You can go to PTK

1 to get this stuff. But on top of it, these students have
2 privacy interests, and I don't see any relevancy here to
3 these private communications, these private situations,
4 these confidential communications to whether or not these
5 guys are infringing our trademark.

6 THE COURT: Well, with respect to NAVEX, though, did
7 NAVEX's counsel or somebody representing NAVEX file a
8 motion to squash and that was teed up?

9 Because the subpoena went out, and I assume there
10 was some meet and confer or otherwise. You got before
11 Judge Ball. He said, no, it can't happen. Did NAVEX --
12 were you representing NAVEX or was --

13 MR. POLAK: We were not. They demurred to us to
14 take care of that for them.

15 THE COURT: Okay.

16 MR. POLAK: And their position was whatever Judge
17 Ball happens to do, we're going to comply with it. They
18 weren't going to go hire lawyers to represent them out in
19 Seattle, which is where they were located, and I don't
20 think anybody wanted to go out to Seattle to go litigate
21 it. But they were willing to comply with whatever the
22 Court did.

23 But of course in that instance, the reason why we
24 were able to do that is because we had advanced notice. We
25 had the due process that's allowed under the federal rules

1 to speak up and protect not only Phi Theta Kappa's
2 interest, but the interests of these students that Phi
3 Theta Kappa works with every day. So I see that as a big
4 distinction between these two situations.

5 You know the schools in this instance have --
6 Dr. Tincher-Ladner is trying to get ready for this
7 convention that's next week. It's the pinnacle of the
8 year. At the same time, she is fielding many, many
9 communications, mainly phone calls from these colleges
10 saying, wait a minute, we're a 2,500-student campus. We're
11 a 500-student campus. We don't have the staff to deal with
12 this. We don't have the money to go hire a lawyer to go
13 fight this. What are you doing about this?

14 THE COURT: Well, the public college system here in
15 Mississippi, they do have lawyers. So I'm just curious why
16 is that burden not on that institution not to disclose
17 material that is FERPA? I mean, you know you cannot -- I
18 mean, everybody knows that you cannot --

19 MR. POLAK: Well, apparently they did, because
20 that's in the documents they produced to us. Some of these
21 schools went ahead and just said it's not worth it to us to
22 go through that process. Here ya go, and they produced
23 those communications.

24 And it's a little difficult for us to tell which
25 ones they marked as confidential and which ones they marked

1 as AEO unless we go by a document-by-document basis. We
2 haven't had time to do that. But I can tell you this. Our
3 initial review shows that they produced -- "they" being
4 Honor Society -- produced spreadsheets with email addresses
5 of these students not marked confidential under the
6 protective order.

7 Why is that interesting? Because counsel to date in
8 this case have bent over backwards together collaboratively
9 to protect student information. There are documents that
10 have been produced in this case that contain student
11 emails. Those have been produced in this case.

12 There have been depositions taken where student
13 emails have been presented to witnesses, and they had to
14 testify with them. How did we deal with that? We either
15 marked it confidential, or in many instances we treated it
16 not just confidential, attorneys eyes only, documents that
17 were exchanged between the parties in discovery.

18 Honor Society's own counsel has acknowledged that
19 that information is so confidential that it needs to be
20 protected under attorneys eyes only, or in other
21 instances -- I think in some select instances, it was
22 produced confidentially or marked confidential. But you
23 can see the disconnect here; right?

24 But getting back to your initial question around,
25 isn't this the burden of the schools? I get your point

1 about that, and I don't think that we necessarily dispute
2 at some level the schools need to do what the schools need
3 to do. But that's not really the basis of our claim.

4 The basis of our claim is they have engaged in an
5 orchestrated campaign, not to go collect information that
6 these schools have because they're interested in it. They
7 have instituted an orchestrated campaign to maliciously,
8 and in many instances with respect to the survey
9 misleadingly, engaged in an effort to drive wedges between
10 Phi Theta Kappa and its constituents, students, its
11 members, as well as its college partners.

12 If Phi Theta Kappa loses the support of the
13 colleges, Phi Theta Kappa will be over. And the reason why
14 is because where does it get its membership?

15 It doesn't get its membership because it advertises
16 online the way Honor Society does. It doesn't get its
17 membership because it blasts literally millions of emails
18 every month to anybody and everybody who might have an
19 email as saying, hey, come join an Honor Society when
20 they're not.

21 Phi Theta Kappa has enjoined the trust and respect
22 of its college partners for a hundred years. The identity
23 of the prospective members of Phi Theta Kappa come from
24 those colleges. That's what this upload is that
25 Mr. Wallace was talking about. The colleges are the ones

1 who identify who is eligible to join Phi Theta Kappa. And
2 in about 50, 60 percent of those instances, Phi Theta Kappa
3 sends emails to those students saying you've been invited;
4 you've made it; you've achieved. Welcome to the club.
5 Welcome to the Honor Society; you've earned it. In some
6 other instances, the colleges choose to do it themselves.

7 But the focal point there in terms of the delivery
8 of those email addresses are the colleges. They're the
9 ones who make those decisions. So if the colleges start to
10 figure out because of what it is Honor Society has done and
11 Honor Society Foundation knowing they're going to get --
12 because it doesn't seem like it's stopping, because the
13 college I talked to yesterday said not only did I get these
14 three weeks ago, four weeks ago, I got one on Sunday asking
15 them for pretty much the same information that they'd
16 already been requested three weeks ago. It's going to
17 continue. They're going to continue doing it.

18 It's not that the colleges have the burden to
19 respond, yes, they do. What we're here about today is the
20 malicious intent of Honor Society and its affiliate Honor
21 Society Foundation to use these, what they would say
22 otherwise legitimate records requests, to disrupt Phi Theta
23 Kappa's business right before the pinnacle of its year.
24 That's what's going on.

25 THE COURT: You're basically suggesting they're --

1 aside from these surveys that may be misleading, the mere
2 fact that they're doing records requests --

3 MR. POLAK: To make it burdensome for these schools
4 to do business with the plaintiff in this case. It is
5 purely retaliatory, because we didn't settle with them.
6 It's retaliatory because we had the audacity to sue them
7 for violating our intellectual property.

8 We didn't have this situation before Judge Ball left
9 the bench. We have it now. And they've decided that what
10 they're going to do -- and the phrase I used on the phone
11 the other day with you I think is very appropriate --
12 scorched earth litigation. If PTK is going to take us
13 down, we're taking PTK down with us. And that's what
14 they're doing, and that's why we're here.

15 If this was just about a bunch of GPA-request
16 emails, we wouldn't be here. We wouldn't be here, because
17 PTK is not referenced in those GPA emails, right, those
18 records requested. We didn't do that.

19 What do we see on the other ones, the ones we're
20 here about? The subject line on those emails says "PTK
21 document requests," and you'll see in the briefing and
22 Dr. Tincher-Ladner's declaration, colleges have called her
23 up and said why are you asking me for this stuff?

24 There's no reference to Honor Society on those
25 requests, that Honor Society; right? It says "PTK

1 request," and it comes from a Mr. Asari. And so the
2 colleges --

3 THE COURT: Mr. Asari at what email address?

4 MR. POLAK: David Yoshea --

5 THE COURT: I mean, does it --

6 MR. POLAK: I'm sorry. It's a Gmail.

7 THE COURT: Is it not Asari@HonorSociety.com?

8 MR. POLAK: I believe some of the surveys came from
9 HonorSocietyFoundation@gmail.com. I believe that the
10 public records requests -- I could be wrong on this, but I
11 think the ones that I have seen come from Mr. Asari's
12 personal Gmail account, which I believe Mr. Moradian has
13 already claimed owner- -- well, control over, if you will,
14 because he's like, yeah, I knew these things were going
15 out. I knew that we were going to be sending out these
16 requests. And I'm entitled to do it, and I'm going to keep
17 doing it.

18 And that's our point is that it would be one thing
19 if he was interested in knowing what Kilgore College down
20 in Texas, happened to say, what was your GPA? And they
21 send one of them, okay, fine. They could even send 50 or
22 100, whatever.

23 But if you're going to send what might have been
24 10,000-plus emails to our community colleges with the
25 intent, the stated intent in their briefing, and you know

1 what? I think I'm totally okay with doing it. I think the
2 courts are going to be okay with me doing it, and I'm going
3 to continue doing it. They've even done it since we filed
4 our papers.

5 THE COURT: Do we know if the same request was sent
6 to each community college or each public entity which
7 received the request? Do we know if it was the same
8 request?

9 MR. POLAK: I've been asking that question since
10 March 6th. I still do not have an answer to that question.
11 It is not in the documents they've produced or the
12 documents we've seen.

13 THE COURT: In the documents they've produced, does
14 it appear it was the same --

15 MR. POLAK: I don't --

16 THE COURT: I mean, you have 62,000 of them, so does
17 it --

18 MR. POLAK: I can't answer your question based on
19 the documents they've produced. I can answer that question
20 based on the communications that Phi Theta Kappa has
21 received from the schools. And it does appear that these
22 public records requests have taken probably four or five I
23 guess different forms, and they've evolved over time. My
24 suspicion is that -- well, let me back up. They've evolved
25 over time. We have received complaints from colleges

1 around these, and in all of those complaints, they have
2 identified what effectively are the same requests that all
3 the other colleges are complaining about.

4 We also have a suspicion based on that that they are
5 sending out not only requests to the -- let's call them
6 requests one, two, three, four, and five, because I know
7 about five different forms. Two of those are GPA requests,
8 so we take those out. Let's call it one, two, and three,
9 so these are public records request that say -- that make
10 reference in some way to either Dr. Tincher-Ladner or Phi
11 Theta Kappa or both.

12 The first one was that one I've already described,
13 and this does seem to be the one that we have received the
14 most communication around. And that is the one that's
15 identified in the briefing, and it says "PTK records
16 request" in the subject line. And it says again "PTK
17 records request" I think in the body, and it says -- I'm
18 paraphrasing -- request is made for all communications
19 between PTK and Lynn Tincher-Ladner and the school or
20 concerning them, as well as any student emails that you,
21 the school, gave to Phi Theta Kappa for membership. I'm
22 butchering the language, but that's generally what it says.
23 And so we have that one.

24 We also have the one that I just learned about
25 yesterday for the first time that says -- and this is the

1 one sent out on Sunday. It might have gone to one school.
2 I'm sure it did not. They didn't hit send just to one
3 school. It's a small school in the middle of the Midwest.
4 They sent it to a bunch. We just haven't heard about it
5 yet.

6 But this one says we're asking for all records of
7 communications concerning HonorSociety.Org from Phi Theta
8 Kappa. So that is already included in the first records
9 request. We now have -- in other words, there's overlap
10 between them. There's no reason to have sent this last
11 one, not at all. They already got the first one.

12 They sent another one, and so what they're going to
13 do -- what they're doing is, they're asking for, I think,
14 the same information over and over and over again,
15 peppering these schools not with legitimate requests for
16 information. On their face, it might look legitimate.

17 But in the bigger context of what we know now, which
18 is it's very likely they have sent out literally thousands
19 of emails -- thousands of emails, maybe potentially more
20 than 10,000 emails for public records requests, that
21 doesn't sound to me like a legitimate information gathering
22 thing. That sounds to me like a campaign to tortiously
23 interfere in our relationships and prospective
24 relationships, and so that's why we're here. That's what
25 our concern is.

1 And that's why we need the expedited discovery,
2 because in order for us to be able to stitch up the wound,
3 as Mr. Wallace said, we've got to know how big this wound
4 is. I've got to know how much -- how much thread I'm going
5 to need, and we're only going to know that if they tell us
6 how many emails they sent. Still don't have that.

7 How many public records requests did they send and
8 to whom? Still don't have that.

9 And it's -- it's baffling to me why we don't have
10 it. They spent all this time to produce literally 60,000
11 pieces of paper to us digitally, and they can't give us the
12 thing I've been asking for since March 6th?

13 They've known about this for a long time. It tells
14 me the reason why they didn't want to give it probably was
15 intentional, and I'm going to go ahead and go there. The
16 reason why it would be intentional is because they didn't
17 want us sitting up here and standing up here today to tell
18 you that we now know for sure that they sent 10,000 emails
19 for public records requests that overlap with each other to
20 the people that are our lifeblood. That's why we didn't
21 get it, at least that's my suspicion. And so that's why we
22 need it, and that's why we're so concerned about it, Your
23 Honor. We wouldn't be here if it was about GPA requests.

24 THE COURT: One final question. You talk about the
25 burden on Dr. Tincher-Ladner and the burden on PTK. I

1 think in your papers and otherwise in her affidavit or
2 declaration, I think she talks about the burden on those
3 colleges with respect to responding, but she probably is
4 not the best person to talk about what burdens the colleges
5 might be facing in responding to these requests.

6 It's basically the burden of PTK in responding to
7 the questions or the calls and communications from those
8 colleges --

9 MR. POLAK: If we're --

10 THE COURT: -- because she has to take them aside
11 from whatever duties she's doing or whatever those of her
12 staff and team are doing. Literally all she has to say is
13 I think that document did not come from us. We believe it
14 came from somebody else. Talk to your counsel or deal with
15 it in that way.

16 MR. POLAK: I absolutely believe that is a burden on
17 PTK. Whether that is a relevant burden to your decision
18 here today is going to be up to the Court.

19 But it's not the only burden we're talking about,
20 because what has been a part of those communications to
21 Dr. Tincher-Ladner has been communications that this is
22 really burdensome. We don't have the staff to deal with
23 this. Why are we being drawn into your lawsuit? Why do we
24 have to deal with this? That lawsuit is your problem, not
25 our problem. How many more records requests are we going

1 to get? Why do we have to continue doing this? Are you
2 going to help us prepare the responses? Can you give us a
3 legal opinion around it?

4 Those are the types of things, and so what are they
5 really communicating to us? Sure, they've got burden that
6 they have to deal with. But you're right, Judge; in a
7 harsh world, that's their problem; right?

8 But that's not the point of the records requests.
9 The point of the records requests is exactly the burden
10 that those people are talking about, which is to
11 maliciously and tortiously interfere with our relationships
12 and our prospective relationships and the possibility
13 that -- and these colleges that are -- not the possibility,
14 but the colleges that are going to be giving us, hopefully,
15 downloaded information in the future, and what is this
16 campaign designed to do?

17 It's to do exactly what you've identified: To
18 overburden those colleges in such a way that it no longer
19 benefits them from a pure cost-benefit standpoint to engage
20 with Phi Theta Kappa. Because, again, Honor Society's
21 position is if you're taking us down, we're taking you
22 down. That's what is going on here. At least we believe
23 it; we strongly believe it.

24 There is no reason for them to have sent out -- I
25 mean, I guess put another way, let's talk about Rule 26.

1 There's 1,500 colleges out there, give or take. If they
2 issued -- if they gave us notice they were going to send
3 out even 1,000 or let's say 500 subpoenas to those
4 colleges, we'd probably be having a conversation with you
5 or Judge Myers about it; right? Because we would have
6 notice. We would have all of those things, and my guess is
7 the Court would not countenance that.

8 They would say, well, what's the scope of this?

9 And they would have to say, well, we want the
10 communications that exist between Phi Theta Kappa and these
11 colleges.

12 Well, doesn't Phi Theta Kappa already have that?

13 Yes.

14 Well, why aren't you asking Phi Theta Kappa for that
15 first?

16 Which is exactly what happened with NAVEX, because
17 that was part of what Judge Ball said. Why aren't you
18 asking Phi Theta Kappa for this first? Why are you going
19 to this third-party entity? And Judge Ball said that's not
20 right. If you want it, go ask them, but I'm going to put
21 some guardrails around it. It's only public complaints,
22 not private complaints, we're not going to deal with that.

23 So what is it that they turn around and do? They go
24 and they do a complete end run around it, no due process,
25 no notice, none of that kind of stuff.

1 And that's what's so I think evidentiary of the
2 malice behind what it is they're doing. There's a host of
3 other reasons that go to show it, too.

4 THE COURT: I mean, that was one of the questions I
5 just wrote down here.

6 MR. POLAK: Okay.

7 THE COURT: They could have submitted an
8 interrogatory or request for production of documents to Phi
9 Theta Kappa asking them to tell us what community colleges
10 you've dealt with, and give us copies of all the
11 correspondence. And I know they might be broad and
12 objections to them, but then there will be an opportunity
13 to meet and confer --

14 MR. POLAK: Not only could they have done it, they
15 did. We tendered for the Court examples of our Rule 34
16 requests -- I'm sorry -- their Rule 34 request to us. And,
17 yeah, there were objections, but they've never pursued
18 them. They've never said you didn't give us enough of the
19 communications with the community colleges. They've never
20 pursued that, and that's what's I would say baffling. I
21 would say instead what makes all this so much more
22 suspicious is that they knew there was a process.

23 There's an existing lawsuit in place, but what did
24 they do? They got stymied on the NAVEX subpoena. Judge
25 Ball set out some very clear rules. Judge Ball leaves the

1 bench. Executives, not lawyers, executives at Honor
2 Society then make the decision, you know what, we're not
3 going to tell our lawyers, because they might tell us no.
4 We know that's what happened.

5 So what do they do? They go ahead and they do it
6 anyway. They do it anyway, and then apparently once they
7 talked with their lawyers -- I'm not going to assume what
8 those conversations were, but we do know this. After we
9 complained to their lawyers, the survey got terminated.
10 The survey, or the offending part of the survey, was
11 terminated fairly quickly.

12 And so, you know, I guess when you go back and look
13 at that in the bigger context of things, none of this looks
14 right. There is something inherently wrong about a company
15 going and sending out that volume of communications
16 repeatedly to the people who matter most to our
17 organization, not because there's a legitimate competitive
18 interest in doing so, but because what they want to do is
19 use the records requests for two purposes: To drive wedges
20 between us and our most trusted partners and most needed
21 partners; as well as to gain information that they could
22 then use for step two, which is this offensive, misleading,
23 and in some ways false survey they have issued.

24 The two things work hand in hand, but what is the
25 goal? The goal is to attack our relationships with our

1 colleges and to attack our reputation with our student
2 members, and just because we had the audacity of suing them
3 for creating confusion in the marketplace. There are
4 literally hundreds of examples in our documents and their
5 own documents showing that because of what they were doing,
6 students were confused. Students were joining their
7 organization thinking that they were joining ours. That is
8 basic trademark 101 when that happens, and they don't want
9 to stop.

10 They don't want to stop what they're doing. And
11 that's what we were trying to get the thing settled for,
12 was to get them to stop doing it, but we couldn't get it
13 over the hump. Fine.

14 But the next thing you don't do is then start trying
15 to tear down your opponent's business in litigation and
16 outside of litigation. That's what tortious interference
17 claims are there for, Judge, and you know that. I don't
18 have to tell you things that I know you already know.

19 THE COURT: Thank you, Mr. Polak. We're going to
20 take a 15-minute break, and then I'll hear from the other
21 side.

22 MR. POLAK: Thank you, Judge.

23 MS. SUMMERS: All rise.

24 (A brief recess was taken.)

25 MS. SUMMERS: All rise.

1 THE COURT: You may be seated.

2 Before I hear from you, Mr. -- I know you're not
3 Linke, but you've got the same name. First name, Daniel --

4 MR. NEWMAN: My name is Derek Newman.

5 THE COURT: Derek Newman.

6 Let me ask, Mr. Polak, this question here --

7 MR. POLAK: Yes, sir.

8 THE COURT: Huh-huh, you can stand there as long as
9 you talk into the mike.

10 You mentioned these 62,000 pages that you've
11 received so far, and I had intended to ask the question
12 with those documents and the others that may come in, with
13 the existing discovery order that's in place by Judge
14 Myers, the August deadline, do you think that that -- will
15 that deadline -- knowing what you know about what you've
16 received and what you might receive, would that deadline --
17 would that give you adequate time to complete discovery?

18 MR. POLAK: No question. We weren't really in
19 support of the last extension. We thought we had plenty of
20 time under the order. The reason why the extension was
21 given had less to do with discovery time, had more to do
22 with the expert deadline that was then scheduled for
23 March 15th. We were ready to go with our experts, but I
24 think the defendants were not.

25 And so but the answer to your question is, yes, we

1 can get it done. I might just put a little side note on
2 that. If we get what we've asked for on the expedited
3 discovery, whether we get it in a week, two weeks,
4 whenever, and it's a complete set, I don't know that we're
5 going to need anything else.

6 Now, I know the other side has asked for reciprocal
7 discovery. You might remember in our papers we said, look,
8 we get the whole goose-gander thing. But this goose, Phi
9 Theta Kappa, we laid it out for the Court exactly what it
10 is that we wanted. It was very narrowly tailored to these
11 issues, and we don't have the benefit of that.

12 So while it is that -- I think certainly for the
13 expedited procedures, I don't know that that reciprocity or
14 that mutualness exists here, because we don't know what it
15 is that they're asking for. But even if they were to ask
16 us for it, we'll give them whatever it is the Court is
17 inclined to order that we produce. But I don't see under
18 any circumstance that we would not be able to get this done
19 under the current schedule.

20 THE COURT: Okay. And one final question since you
21 mentioned the extension of time on the experts. Are these
22 experts on -- I haven't looked at the designations -- well,
23 and they're not filed, anyway.

24 MR. POLAK: Right.

25 THE COURT: What type of experts are we talking

1 about? Persons who are in trademark or what other types of
2 experts are there? What experts do we have that you all
3 have designated so far?

4 MR. POLAK: Sure. We haven't designated any yet.
5 We were ready to go. But generally speaking, I don't want
6 to give too much away since we're not there yet. But you
7 typically in these cases have liability experts and you
8 have damages experts.

9 THE COURT: Okay.

10 MR. POLAK: And liability experts are the kind of
11 people that you've already referred to, which are those
12 people who go and do consumer surveys to test out, you
13 know, do you have secondary meaning in your trademarks? Is
14 there a likelihood of confusion based on a bigger survey?

15 We already have instances, plenty of instances, of
16 actual confusion. But it's not uncommon in these cases to
17 have an expert who comes in and says, well, I'm going to go
18 ahead and survey the market to see if there is consumer
19 confusion in that survey laboratory that they do.

20 And then we also have damages claims that are
21 disgorged profit. We also have a damages claim that
22 their -- their activities even before here were --
23 basically created a damage across the entire market for
24 honor societies. And that we felt that, because our
25 membership numbers have been going down, anyway. Because

1 of a survey we did of people who were not joining us, and
2 we did the same survey, like, back in 2005. But the survey
3 that we did here in 2022 or 2021, we asked these people,
4 why are you not joining Phi Theta Kappa? Thirty percent of
5 the people who responded said, well, because we think it's
6 a scam. We think the honor societies are scams.

7 We did this same poll back in 2005 before these guys
8 were in the market, not a single word about Phi Theta Kappa
9 being a scam. And so we think that the activities -- just
10 the mere existence of Honor Society doing what they do has
11 caused damage, so that is an expert damage -- that's
12 probably an expert that we're going to have as well.

13 THE COURT: Okay.

14 MR. POLAK: But it might be that we have to go and
15 do some additional expert work here, but based on what
16 we're talking about here, like Mr. Wallace was saying, that
17 may not be necessary. And even if it is necessary, I'm
18 pretty sure we can get it done by the deadline we currently
19 have.

20 THE COURT: Okay. Thank you. And when is your
21 existing expert deadline?

22 MR. WALLACE: June.

23 MR. POLAK: It was 60 days, so it was March, April,
24 May. It's supposed to be May 15th.

25 THE COURT: Okay. All right. Thank you.

1 I'll now hear from you. I know you've been waiting.

2 MR. NEWMAN: I have, Your Honor. Thank you.

3 So I'll start with the motion to supplement the
4 pleading; the Court should deny that for two reasons.
5 First, because a motion to supplement requires that the
6 plaintiff show that the claims are related to the initial
7 claims filed in their original complaint, and here they are
8 not.

9 And I listened carefully when PTK spoke to Your
10 Honor and indicated that they're at issue, because the
11 parties are competitors. And he focused on our papers
12 where we say the parties are competitors; that's certainly
13 not in dispute. But the tortious interference claim is not
14 an unfair competition claim. If it were an unfair
15 competition claim, it may or may not relate to the original
16 complaint. But tortious interference has nothing to do
17 with trademark infringement. It's a completely separate
18 type of claim that is alleging that somebody -- in this
19 case, Honor Society -- interfered with the contract. So
20 whether the parties are competitors or not, it's irrelevant
21 to the analysis. Specifically, the tortious interference
22 claim does not relate to the intellectual property claims.
23 The Court should deny it on that basis.

24 THE COURT: Let me ask you this question. If the
25 Court denied it and told them you need to bring your

1 separate action in a separate complaint. They do that; it
2 is filed. They pay whatever the filing fee is, they file
3 it. It is filed here in the Southern District of
4 Mississippi. They will have to put on the civil cover
5 sheet that there is a like or related case in some way.

6 Our local rules, internal or otherwise, sort of
7 suggest that a like or related case ought to be handled by
8 the judge who has the related case. And I suspect the
9 parties being the same and all of that, I don't think
10 there's a broad leap to us determining on the inside here
11 it's like or related, and if that's the case, it comes back
12 here.

13 Then I think there might be a motion filed by the
14 parties. Judge, you ought to consolidate that case with
15 this one, because we don't want to have to try these issues
16 separately, to be before you for another three years or two
17 years or one year even, in dealing with the intentional
18 interference case.

19 So why does -- why shouldn't the Court yield to
20 efficiency in that instance?

21 MR. NEWMAN: Your Honor, I don't think that claim
22 would be filed in this court. It's a claim under state
23 law. And in order to qualify for federal court under
24 diversity, the plaintiff has to show that there's \$75,000
25 worth of damages, but here --

1 THE COURT: They have to claim more than 75,000. I
2 mean, they'll have to claim it. They don't have to prove
3 it in the initial complaint; right?

4 MR. NEWMAN: Your Honor's correct, but it needs to
5 be plausible. And here the plaintiff hasn't identified any
6 contract that's been breached, any customer that's been
7 lost, so I don't know that it could, in good faith, claim
8 \$75,000 or more in controversy. So I think that claim
9 would be in state court. It would not be before Your
10 Honor.

11 THE COURT: But that would be on a motion to dismiss
12 or a motion to remand, wouldn't it? That would be a motion
13 to dismiss, because presumably they will file it here.
14 They will claim they have more than \$75,000 in damages.
15 They will say our complaint survives Rule 8 at least. It
16 may not -- you will say it doesn't survive Rule 12, and the
17 Court will have to deal with that.

18 But as long as they claim \$75,000, they don't have
19 to prove anything; correct? All they have to do is claim
20 \$75,000 or more, and that gives them -- assuming all
21 diversity things are there, people of different states, and
22 I don't think there's a disagreement with respect to that.

23 Then that's enough to at least keep it here in this
24 Court; right?

25 MR. NEWMAN: Well, Your Honor, under *Iqbal* and

1 *Twombly*, the plaintiff is required to plead more than mere
2 conclusions, and there are no facts that indicate that the
3 plaintiff suffered \$75,000 or more in damages. And so if
4 the plaintiff is complying with its pleading obligation, I
5 don't think that it can properly plead \$75,000 or more in
6 damages, and it will be filed in state court.

7 THE COURT: If they're working on an expert right
8 now that's going to be talking about damages, and if they
9 were to wait until after May 15th to file that suit, that
10 would be plausible at least; right?

11 Would you disagree that that would be -- we deal
12 with *Iqbal* and *Twombly* issues all the time, and we don't
13 grant them around here, the motions to dismiss.

14 MR. NEWMAN: I understood, Your Honor, that the
15 plaintiff was referring to an expert with respect to their
16 trademark claims, not their tortious interference claims.

17 THE COURT: Okay. Okay.

18 MR. NEWMAN: But that's the answer to the Court's
19 question.

20 THE COURT: Okay. All right.

21 MR. NEWMAN: The second reason that the Court should
22 deny the motion to supplement is because it is futile. The
23 plaintiff does not properly plead a claim for tortious
24 interference with business or interference with business
25 advantage.

1 In fact, PTK here today conceded that it lacks a
2 claim for tortious interference. Counsel conceded that
3 there haven't been any contracts that have been terminated,
4 and so the third claim that they propose to add, counsel
5 concedes lacks merit. It should be dismissed.

6 The second claim, the fourth claim for relief, is
7 with interference of business advantage. And the
8 difference between tortious interference with contract and
9 interference with business advantage is pretty simple.
10 Tortious interference with a contract involves parties that
11 actually have a contract. So, for example, if Honor
12 Society has a contract with a college and PTK has a
13 contract with a college, and Honor Society causes a breach
14 and that contract is actually breached, that would be
15 tortious interference with a contract.

16 Interference with business advantage is one step
17 removed. In that case you have, for example, PTK
18 negotiating a contract with a community college, and then
19 Honor Society swoops in and through wrongful action causes
20 that community colleges never to enter into the contract.
21 Thus, PTK loses a customer.

22 But even under interference with business advantage,
23 the plaintiff is required to show a lost customer. Here
24 the plaintiff hasn't shown any lost customers. I don't
25 believe they've pleaded that, and so PTK concedes that its

1 proposed third claim for relief lacks merit.

2 And under the fourth claim for relief, because they
3 don't plead a lost customer that, too, lacks merit, and the
4 amendment would be futile.

5 THE COURT: Is their customer base only limited to
6 the community colleges, or can they argue that a customer
7 base is a potential student or a current alumni or either a
8 person who is a member?

9 And, again, they're getting these documents now.
10 And if they were to reach out to a specific student, and
11 that student says, yeah, I did not apply for PTK because I
12 had gotten this specific stuff from Honor Society.

13 And PTK says, well, what are your relevant
14 qualifications? This person says, well, I'm -- the records
15 show and they have those records now, because the college
16 has submitted the records in response to the Freedom of
17 Information records request. It shows that the student is
18 4.0 student at that college, and based on that, Phi Theta
19 Kappa says, well, you would have been eligible to be a
20 member, compete for our scholarships. And now you're not,
21 because you've missed the deadline or whatever.

22 So who is the customer here? Is the customer only
23 the community colleges, or can the customer, the lost
24 customer, be the individual students as well?

25 MR. NEWMAN: Your Honor, the customer could

1 certainly be a student. But PTK can't merely speculate
2 that a student is unlikely to join PTK because of Honor
3 Society's actions. They actually have to have facts to
4 support their Rule 11 obligation under the pleading.

5 THE COURT: Do they have to have facts to do Rule 8?

6 MR. NEWMAN: Absolutely. In order to plead a claim
7 for interference with business advantage, the plaintiff has
8 to show a lost customer. Just one perhaps, but they have
9 to show a lost customer. And speculation that they may
10 have a lost customer in the future is insufficient.
11 Without pleading a lost customer, the pleading fails. And
12 the Court should not grant the motion to amend, because
13 it's futile.

14 THE COURT: Okay.

15 MR. NEWMAN: I'll speak for a minute about Honor
16 Society Foundation. The claim against Honor Society
17 Foundation likewise is made without factual basis. So PTK
18 suggests that because Honor Society sent an email from an
19 email address that is HonorSocietyFoundation@Gmail.com,
20 that that means Honor Society Foundation has liability in
21 this case. It does not. They're referring to merely an
22 email address, not any actions or activities by the
23 foundation. And because the only basis for naming the
24 foundation is an email address, there is no claim against
25 Honor Society Foundation, and a pleading against it would

1 be futile as well.

2 THE COURT: Isn't the tie between Honor Foundation
3 and Honor Society Mr. Asari himself? Isn't Mr. Asari
4 involved in both entities?

5 MR. NEWMAN: I don't know, Your Honor. I know that
6 Mr. Asari is an employee of a business that Mr. Moradian
7 owns. I'm not sure whether he has involvement in the
8 foundation. I know he has involvement in HonorSociety.Org,
9 Inc.

10 THE COURT: But, again, sometimes persons file
11 complaints that might be on the line and discover -- this
12 Court generally allows discovery. I mean, you know,
13 motions to dismiss are not, you know, ruled on favorably.

14 So if I give you an opportunity to file your motion
15 to dismiss, I'll give the other side -- give me your best
16 pleading. This is your one last chance to plead your best
17 case if I agree with the defendants here that that case
18 ought to be dismissed. And then they come back with
19 information that ties it to discovery that they would have
20 received in the underlying action, then would the Court be
21 permitted to allow the case to go forward?

22 MR. NEWMAN: Based upon what I heard today from
23 PTK's argument, its only basis for a complaint against the
24 foundation is an email address, and I would submit under
25 Rule 11 that's insufficient to name that party.

1 If in discovery they learn that the foundation had
2 something to do with the acts they complain are wrongful,
3 at that point, they can make a motion to amend. But at
4 this stage, they don't have those facts. And they never
5 will, because I understand that Honor Society Foundation
6 did not have anything to do with what they're alleging. So
7 without a basis to name the foundation, the pleading would
8 be futile.

9 THE COURT: Would they be permitted to ask the
10 question of why Honor Society Foundation sent the email?

11 MR. NEWMAN: Absolutely. That's relevant to the
12 claim against HonorSociety.Org, Inc., and in deposition,
13 that's a perfectly fine question. Why was the email
14 address HonorSocietyFoundation@Gmail.com? And there would
15 be no objection, and an answer would be given.

16 I'll turn next to the TRO. In our papers, we laid
17 out several independent reasons why the TRO should be
18 denied. Let me focus on the three most compelling. I'll
19 summarize them:

20 First, I've already began this discussion, PTK does
21 not identify a lost contract or a lost customer.

22 Second, Honor Society had the absolute right to send
23 out surveys and public records requests.

24 And, third, no irreparable harm was suffered.

25 I'll start with the first point. I think the most

1 striking thing that I've found from PTK's papers, in both
2 its opening brief and especially its reply to us and even
3 today in oral argument is that PTK has not identified a
4 single customer that it lost. It concedes that no contract
5 was terminated. Okay. But it claims it still would like
6 to allege interference with business advantage, and that
7 under Fifth Circuit precedent, and I'll cite a couple of
8 them.

9 *Par Industries versus Target Container and Cenac*
10 *versus Murray*, that claim requires that there is actually a
11 lost customer, not speculation, but a lost customer.
12 Because speculation wouldn't be an interference with
13 business advantage claim. That would be perhaps an
14 anticipatory claim, and there is no Mississippi law for
15 anticipatory interference with business advantage.

16 And if there was, it wouldn't be allowed in this
17 court, because this is a federal court where there has to
18 be a case in controversy to give rise to standing. There
19 has to be an actual injury, and without a lost customer,
20 there is no actual injury. The initial threshold element
21 that PTK must show is a lost customer. If it doesn't have
22 one, it's not allowed into the courthouse doors, and if it
23 is not allowed in the courthouse doors, it can't make a
24 motion for TRO.

25 Its motion for TRO today is made on the idea that

1 this complaint is going to be allowed, and that it can then
2 make a motion. But with respect to likelihood of success
3 on the merits, if it can't show a lost customer that is
4 already lost -- it's not just merely speculating, it's not
5 mere conjecture, but that it has actually lost a customer.
6 If it can't show that, then it has no likelihood of success
7 on the merits.

8 We point this out in our papers. I expected in
9 reply that there would be some customer that they identify.
10 Really I was thinking that they might make something up,
11 some argument; yeah, we lost a customer. But PTK doesn't
12 even make that attempt, and by not making that attempt, it
13 cannot succeed on the merits.

14 Its claim is not ripe. It suggests that students
15 are not going to do business with it, and that colleges are
16 going to terminate contracts, speculation and conjecture.
17 But that claim is not ripe until somebody actually
18 terminates a contract, so a customer actually doesn't do
19 business with it.

20 Now, PTK notes that it received calls from 25
21 different colleges. Their declaration indicates that those
22 colleges were resentful of public records requests. The
23 reason why PTK received those calls is because under all
24 applicable public records statutes, the Federal Freedom of
25 Information Act also known as FOIA, the state records

1 requests, the public entities that receive the request are
2 required to give notice to any party whose communications
3 would be subject to the request.

4 So these 25 colleges contacted PTK not to express
5 resentment or that they were upset, but rather because
6 they're under a statutory duty to notify PTK. And I would
7 suggest that the Court shouldn't find credibility in that
8 testimony about the schools being resentful, because if a
9 school was resentful, then the declaration would have
10 stated I heard from this college and this person, and this
11 person expressed that they're resentful and here's what
12 they said. That would be hearsay not normally admissible,
13 sometimes considered in the context of a TRO or preliminary
14 injunction, but here there is no such testimony. It's
15 merely conjecture that the schools are resentful.

16 And I would also suggest no school is resentful.
17 The public institutions throughout the country receive
18 public records request on a daily basis. Most of them have
19 entire departments devoted to dealing with them. They have
20 lawyers on staff that analyze these things. Colleges have
21 compliance officers familiar with FERPA. They get these
22 requests all the time. It's a part of doing business.
23 It's nothing they would resent. But what's most
24 noticeable --

25 THE COURT: Let me ask you this. When was the first

1 public records request sent in this litigation?

2 MR. NEWMAN: Honor Society has been sending public
3 records requests since its first day in business years ago,
4 ten years ago. Regularly sends public records requests and
5 is very familiar with the way of doing that.

6 THE COURT: Did you find that the responses
7 received -- because presumably then since it does it all
8 the time, during this litigation, then, they were doing it
9 for the last two years. Was the -- did you find that the
10 responses received from the various institutions were
11 responsive to existing discovery that had been propounded
12 by Phi Theta Kappa?

13 MR. NEWMAN: Your Honor, two responses. First, I
14 would like to take a step back and note that Honor Society
15 sends out public records requests not for discovery in this
16 case, but for competitive reasons. And so those would not
17 all relate to discovery in this matter.

18 And then the second response to Your Honor's
19 question about whether they overlap with discovery
20 responses is just frankly I don't know. And the reason I
21 don't know is because my client is engaging in what it has
22 a right to do, send out public records requests, as it has
23 done for 12 years for competitive purposes. I'm not
24 involved in that process, and I don't expect my client to
25 report to me about everything they do in their business.

1 THE COURT: So what if Phi Theta -- trust me, I
2 haven't seen the discovery requests, and I don't
3 necessarily want to because I leave that to the magistrate
4 judge side of things. But if there were a discovery --
5 discovery had been propounded or request for production of
6 documents saying please provide to me any documents you've
7 received from any community colleges during the course of
8 this litigation. I presume there may be an objection to
9 that by the other side.

10 MR. NEWMAN: I would expect.

11 THE COURT: Right. I would expect that there might
12 be an objection that says it's overbroad, da, da, da, da.
13 The parties have a duty under Rule 26 to meet and confer,
14 and to the extent they couldn't agree on it, they turned to
15 the magistrate judge. The other side says, you know, a
16 motion to compel. They meet and confer before that motion
17 is heard by the magistrate judge. That would give Honor
18 Society the opportunity to tell why any previous response
19 that it might have received to any of its requests for
20 records during the course of litigation would not be
21 responsive to the request for production or otherwise
22 should not be turned over.

23 So that would all involve the discovery issues in
24 these cases. So, you know, again, I guess the question is
25 the fact that you say that Honor Society engages in this

1 all the time and I -- again, I haven't seen the discovery
2 requests, but it's your suggestion that anything that might
3 have been responsive to the records requests would not be
4 responsive to the discovery that's been propounded in this
5 case?

6 MR. NEWMAN: Two answers, Your Honor. First, I
7 don't know. I haven't seen all the records requests. My
8 understanding is that Honor Society has sent records
9 requests for 12 years and does so on a weekly basis. Long
10 before this lawsuit ever began, and so I don't know.

11 THE COURT: And throughout this lawsuit apparently?

12 MR. NEWMAN: Of course. That's part of the way they
13 do business. It's a competitive advantage they have is
14 they're very familiar with the public records statutes and
15 how to get information to help them in their business.
16 They did it long before this lawsuit. They did it during
17 this lawsuit. They'll do it after this lawsuit.

18 THE COURT: And presumably they are very in tune to
19 what the rules of discovery say during the course of
20 litigation?

21 MR. NEWMAN: That's a good point, Your Honor,
22 because the records that our client is seeking aren't for
23 the purposes of this litigation --

24 THE COURT: Well, but that would be a matter to take
25 up --

1 MR. NEWMAN: And because of that, they would never
2 serve -- we would never serve a subpoena on PTK asking for
3 this information, because it's not relevant to this
4 litigation.

5 THE COURT: No, you would not have to serve a
6 subpoena. All you'd have to do is serve discovery on PTK;
7 right?

8 MR. NEWMAN: Correct, Your Honor. So we would never
9 serve a request for production of documents on PTK asking
10 for information that's overbroad for purposes of the
11 litigation. That's not why Honor Society sends out public
12 records requests. They've been doing it forever, and it's
13 to gain a competitive advantage freely under their right
14 under the law.

15 And so it just strikes me as disingenuous for PTK to
16 say we could have gotten it in discovery. We could not
17 have gotten it in discovery. When I say "we," I shouldn't
18 say "we," I should say my client, because I'm not involved
19 in that. My client is not entitled to information in
20 discovery for competitive purposes that don't relate to the
21 lawsuit. For that, my client turns to public records
22 requests, which it has every right to send.

23 THE COURT: But your client is entitled to certain
24 information under the rules of discovery.

25 MR. NEWMAN: Yes, Your Honor.

1 THE COURT: And that may or may not be the same
2 information that you would get from a public records
3 request for your purposes. I think I hear you saying we
4 did the public records requests for the purpose of helping
5 us with our client survey results or whatever else, our
6 marketing or whatever.

7 But you were not -- they were not foreclosed in
8 trying to get that same information from Phi Theta Kappa
9 through a discovery request; right?

10 MR. NEWMAN: If the Court is asking whether records
11 requests and discovery may or may not overlap, my answer is
12 I don't know; it's possible.

13 PTK also objects to the records requests, because
14 they say they don't get advanced notice like they would in
15 discovery. Two responses to that. First, it's irrelevant
16 because the records request is a different procedure than a
17 discovery device. But they do get advanced notice, because
18 the records request requires the public institutions to
19 give the notice and the opportunity to object, which is why
20 PTK received the calls from the 25 colleges.

21 THE COURT: But what if the college does not comply
22 with the rule? I mean, it's on the college. I mean, you
23 know, what if the college does not comply with what the law
24 requires?

25 The law in some states, because we're talking about

1 community colleges in all 50 states. Are we talking about
2 any community colleges outside of the country? I don't
3 know; are we? Are we? I'm asking.

4 MR. NEWMAN: I don't know, Your Honor. I don't
5 think so.

6 THE COURT: Okay.

7 MR. NEWMAN: But to the extent that the colleges do
8 not comply with their obligations under the law, I'm sure
9 there's a remedy, but that's far outside the scope of what
10 we're discussing here. And I don't see any basis for the
11 claim that the colleges are just going to disregard their
12 obligation to provide notice. In fact, the testimony --

13 THE COURT: What if the state law in that state does
14 not require notice?

15 MR. NEWMAN: From what we've seen, they all do. And
16 based upon the testimony of PTK's witness, notice has been
17 given. She's receiving calls from the colleges.

18 Now, counsel spoke here and had a colloquy about
19 schools asking the PTK witness, how many more records are
20 we going to receive and all these type of hypotheticals.
21 Nowhere in the record do we see those statements. Counsel
22 made that up. The Court should not consider that argument,
23 because that's not in the declaration and never happened.

24 THE COURT: And even if it were in Ms. Tincher's
25 declaration, I mean, it would still be an out-of-court

1 statement; right? You contend that it's --

2 MR. NEWMAN: Yes, Your Honor.

3 THE COURT: -- still hearsay; right?

4 MR. NEWMAN: Yes. And then I want to make a final
5 point about the fact that PTK has failed to identify a lost
6 customer and hasn't met the elements of tortious
7 interference. Counsel spoke about misleading speech, and
8 there was a lot of talk about misleading speech and cite to
9 a case about how misleading speech is not protected.

10 Misleading speech is not an element for tortious
11 interference, and I haven't seen any cases indicating that
12 it's a basis for tortious interference. Misleading speech
13 is relevant to false advertising and some other claims for
14 relief. This motion for TRO is not based on a false
15 advertising claim for relief, so the argument about how
16 misleading speech is not lawful is irrelevant to the
17 analysis here.

18 THE COURT: Does it go toward malice?

19 MR. NEWMAN: Excuse me?

20 THE COURT: Would misleading go toward malice to
21 prove the either intentional interference of contract or
22 the intentional interference of induce -- whatever the
23 other count might be, would it go to sort of infer malice
24 on the part of Honor Society?

25 MR. NEWMAN: I don't think it would. So when

1 looking at malice, you're looking at whether the defendant
2 had an unlawful purpose, and if they did, whether there was
3 malice associated with it. And so if they can show an
4 unlawful purpose, then they have to prove that the
5 defendant intended to cause harm.

6 The fact that speech is misleading or not doesn't
7 relate to what their intent is. It might go to another
8 claim they have for relief like false advertising, but
9 that's not what they're suing on here.

10 THE COURT: Why would it not go to show their
11 malicious intent?

12 MR. NEWMAN: Because whether a statement is
13 misleading --

14 THE COURT: Suppose it's --

15 MR. NEWMAN: -- a lot of times --

16 THE COURT: -- suppose it's intentionally
17 misleading, doesn't that go to show that -- couldn't, not
18 does it. But couldn't it go to show?

19 I mean, I'm thinking about your Rule 8 and your
20 Rule 12. Again, it might state a claim, and you're allowed
21 at the end of the day discovery on those particular points.
22 And if it doesn't meet it at that point, motion for summary
23 judgment. But even then if it's a close question, this
24 Court generally allows that to be decided by the fact
25 finder, whoever that might be.

1 So couldn't malice at least -- couldn't misleading
2 statements be used to help a party prove malice?

3 MR. NEWMAN: I don't think so, Your Honor, and
4 here's why. We had less than three days to get our papers
5 together, and then when we finished, we did other legal
6 research because we ran out of time. And we searched to
7 see whether misleading speech was involved in any tortious
8 interference cases. We found none, which is why I suggest
9 that the citations to misleading speech is not a violation
10 of the First Amendment.

11 I suggest that it's irrelevant because in no other
12 cases is misleading speech involved in tortious
13 interference cases. And so I don't think it goes towards
14 malice, because if so, you'd see in jurisprudence --

15 THE COURT: Is misleading speech protected by the
16 First Amendment?

17 MR. NEWMAN: It depends in which context. So to the
18 extent that there's a false advertising claim and it
19 alleges that there's misleading advertising, and that the
20 plaintiff suffered harm, then the plaintiff can recover
21 damages at trial. And the misleading speech isn't
22 protected by the Constitution.

23 But in the context of a TRO, the misleading speech
24 is protected, because a court is not authorized to issue a
25 prior restraint on that speech. It can award damages

1 later, but it can't stop the speech midway through
2 litigation because that would be an unlawful prior
3 restraint. So it would be protected at this stage, but it
4 certainly would not be protected if they proved the false
5 advertisement based on misleading speech and that the
6 plaintiff suffered harm. At trial, they would recover for
7 that.

8 THE COURT: Now, if I understand what I've been told
9 through the papers, Honor Society has agreed to stop those
10 questions that are -- I don't know if it's what the parties
11 believe is misleading or what one side, but Honor Society
12 said, okay, I'm going to put a pause in it. We're not
13 sending out anymore of these questions; is that right?

14 MR. NEWMAN: Yes, Your Honor, and the Court could
15 find that in Mike Moradian's declaration.

16 Counsel today has suggested the language in the
17 declaration isn't strong enough. To the extent the Court
18 believes that, the Court could swear in Mike Moradian right
19 now and ask. But that survey that was sent out with the
20 five objectionable statements, which are not misleading
21 but --

22 THE COURT: But you've agreed to not send out
23 anymore --

24 MR. NEWMAN: And the reason why is because Honor
25 Society sent a onetime survey out. It sends lots of

1 surveys out, has for its entire business. Sends a onetime
2 survey to a lot of people, gets responses, and then is
3 done. It doesn't need to send the survey again.

4 So by the time we contacted Honor Society and asked
5 about that survey, because we learned about it from
6 counsel, we were told, like, yeah, we sent that survey out.
7 And we're not going to send out another one, because we
8 have all the information that we need. So in the
9 declaration of Mike Moradian, he indicates that those
10 survey questions will not be sent out again.

11 I think the declaration is strong enough on that
12 point, and the Fifth Circuit has found that if the conduct
13 has ceased that a TRO or preliminary injunction is
14 inappropriate. I think the declaration is clear about
15 that. But if Your Honor thinks it's not, Your Honor could
16 swear in Mike Moradian right now and ask the question
17 directly.

18 THE COURT: The date of those survey questions, what
19 date were those survey questions sent out; do you know?

20 MR. NEWMAN: Your Honor, I think early March.

21 THE COURT: Early March, which would have been
22 sometime during the litigation in this case; correct?

23 MR. NEWMAN: Of course. The case has been pending
24 for two years.

25 THE COURT: Right. Right. It was not sent out

1 before March?

2 MR. NEWMAN: Those particular questions were not,
3 but lots of other surveys were.

4 THE COURT: But those questions -- information about
5 those questions were available to Honor Society before
6 March 6th, right, or March 4th?

7 MR. NEWMAN: I don't know the answer to that
8 question.

9 THE COURT: Okay.

10 MR. NEWMAN: I think it is entirely possible that
11 Honor Society sent those questions after learning
12 information in depositions that weren't protected as
13 confidential or attorneys eyes only, so that might have
14 spurred that survey. But the survey was a onetime deal as
15 many of their surveys are. They received the results from
16 that survey; they are done.

17 THE COURT: Right. Some of the information there,
18 it appears to me from reading the papers, probably came at
19 the time that Dr. Tincher-Ladner's deposition was taken,
20 and I think we've already agreed or been told that
21 deposition was sometime in February.

22 MR. NEWMAN: Yes, Your Honor.

23 THE COURT: So, theoretically, the survey questions,
24 at least on the points that she was questioned on in her
25 deposition, could have gone out before March 4th?

1 MR. NEWMAN: Yes, Your Honor.

2 THE COURT: So the survey questions with respect to
3 these issues went out on or about March 4th. Again, these
4 survey questions could have never been submitted during all
5 the times at which Honor Society was previously sending out
6 other requests as it does on its usual basis then?

7 MR. NEWMAN: Assuming that Honor Society didn't have
8 the information that formed the basis of those surveys,
9 then I suppose it could not have sent the surveys before
10 that date.

11 THE COURT: Okay. All right.

12 MR. NEWMAN: So, Your Honor, I just spoke about why
13 the plaintiff isn't going to show a likelihood of success.
14 The most glaring is they haven't identified a single lost
15 customer, so they cannot state a claim for relief, and
16 they're not entitled to a --

17 THE REPORTER: Slow down a little, please.

18 MR. NEWMAN: Excuse me?

19 THE COURT: She said, "slow down."

20 MR. NEWMAN: I'm so sorry.

21 THE COURT: No, that's fine. I'm sorry.

22 MR. NEWMAN: They're not entitled to a TRO, because
23 they cannot show a likelihood of success on the merits. So
24 I'd like to move to my second point that I find --

25 THE COURT: Well, let me ask --

1 MR. NEWMAN: Yeah.

2 THE COURT: -- you, if they're not entitled to the
3 TRO --

4 MR. NEWMAN: Yeah.

5 THE COURT: -- and part of the reason why they're
6 not entitled to the TRO is because you contend Mr. Moradian
7 has said we've already collected all the information we
8 need to. There's no need for us to send out this survey
9 request again. That's no concession I guess on Honor
10 Society's part that what you submitted, what went out
11 should never have gone out; right?

12 MR. NEWMAN: Your Honor, we believe -- and I'll
13 speak to it in a moment -- that Honor Society was perfectly
14 entitled to send that survey, and there was nothing
15 misleading about it.

16 THE COURT: Okay. And so now that you've decided
17 not to send it out anymore, is there anything wrong with
18 the Court, either through TRO language or protective order
19 language, require that you not --

20 MR. NEWMAN: Yes, Your Honor.

21 THE COURT: -- send it out again?

22 MR. NEWMAN: Two things wrong. First, the Fifth
23 Circuit has been clear that when a party stops conduct that
24 is concerning that it becomes moot, and a TRO should not
25 issue. So that would be wrong.

1 And then with respect to the protective order, the
2 Fifth Circuit's clear that a protective order governs
3 discovery devices. It does not govern what happens outside
4 of discovery, and issuing that order, Your Honor, would
5 constitute an unconstitutional prior restraint. So even
6 though Honor Society commits and will recommit that it's
7 not going to send those questions again, that doesn't mean
8 that the Court can violate law on prior restraint and issue
9 an injunction against it.

10 THE COURT: Could the Court order you to turn over
11 all the information that are responses, that you received
12 that are responses to what you've already sent out, those
13 particular questions?

14 MR. NEWMAN: I haven't analyzed that, but that would
15 come in the course of a discovery request being sent out,
16 documents being produced or not, a meet and confer, and a
17 motion to compel. And we're not here today on a motion to
18 compel, so I don't know what discovery request those would
19 relate to. I don't know whether the plaintiff would be
20 entitled to it.

21 But I will tell the Court this: We have nothing to
22 hide. We've been very transparent. PTK requested several
23 documents from us that we believe are not within the scope
24 of any prior discovery request, but yet we produced the
25 documents. We produced the documents because we want to

1 move this litigation forward, and we're transparent.

2 So last night after a lot of time gathering and
3 reviewing documents over the past week, we produced 17,000
4 documents, 62,000 pages. Many of which are not responsive
5 to discovery requests, but which counsel informally asked
6 us to produce, and so we did.

7 So with respect to what the Court is asking me now,
8 are they entitled to certain documents, my honest answer as
9 I sit here now is I don't know. Because we're not in the
10 context of a motion to compel, and I haven't analyzed it.

11 So I would guess that because we're transparent,
12 we'd probably produce it, but I'd have to confer with my
13 client and do the analysis to really know the answer to
14 that.

15 THE COURT: Now, generally during this litigation,
16 the parties have had many opportunities to meet and confer,
17 which I think -- and I think you all have done it. Meet,
18 confer, then went to the magistrate judge if you needed to,
19 that suggests to me that the parties knew about the rules
20 of discovery, Rule 26, and their obligation under the local
21 rules. So the parties acted as if this case were
22 proceeding under the umbrella of the Rules of Civil
23 Procedure.

24 Is that a correct statement?

25 MR. NEWMAN: This case is certainly operating under

1 the Federal Rules of Civil Procedure. The records requests
2 and surveys are not discovery devices. They're done for
3 competitive reasons, to gain intelligence, to provide
4 better services, to understand the market, and so they
5 don't relate to Rule 26 or the federal rules.

6 But to the extent that there's a discovery request
7 and it's valid, Honor Society will comply. To the extent
8 we get an informal request, we may comply, as we did last
9 night, and PTK will get all the information that it needs.

10 So I'd like to move to my next point, which is
11 another compelling reason why this Court should deny the
12 motion for TRO, and that is Honor Society had the absolute
13 right to conduct public records requests and send surveys.

14 Now, what was striking to me is that the federal
15 government in every state has these public records request
16 laws, and we cite four -- four Fifth Circuit Court of
17 Appeals binding cases that held that a party has the
18 absolute right to send public records requests even when
19 it's in litigation.

20 So that's the issue before the Court, one of many,
21 but does Honor Society have the right to send these records
22 requests? If so, PTK can't succeed on the merits of its
23 claims.

24 And then the other side is, is it appropriate to
25 issue a TRO? And I'll cite the Fifth Circuit cases.

1 There's four of them. They're all precedential. It's
2 binding law that decides this matter.

3 In *Mississippi Department of Wildlife versus*
4 *Mississippi Wildlife Enforcement*, the Fifth Circuit held
5 that sending a public records request does not require a
6 legitimate purpose. And even an intent to cause harm to an
7 opposing party in litigation still allows the party to send
8 the public records request, and that a court can't stop
9 that.

10 In *Hoover versus U.S. Department of Interior*, the
11 Fifth Circuit held that litigation is not an exception to
12 the right to send public records requests, and a party to
13 litigation may request records while litigation is pending.

14 In *Halloran versus* --

15 THE COURT: In those cases -- I hear you.

16 In those cases, were those parties required to turn
17 over the information they received in response to those
18 records requests? Were they required to turn it over to
19 the other party involved in the litigation?

20 MR. NEWMAN: From my recollection of those cases,
21 that was never an issue. The question wasn't whether they
22 were required to turn over those documents. The question
23 was whether a party had the right to seek public records
24 requests or whether it had to send subpoenas and requests
25 for production of documents. And the Fifth Circuit said

1 four different times a party in litigation can proceed on
2 parallel tracks: public records requests, discovery. And
3 the public records requests aren't part of the discovery
4 process.

5 In *Halloran versus Veterans Association*, (sic) the
6 Fifth Circuit Court of Appeals said that, "Even if a party
7 is sending public records requests for less than lofty
8 purposes" -- that's a direct quote from the case; that's
9 what the Fifth Circuit said -- "Party is sending public
10 records requests for less than lofty purposes, the party
11 nonetheless has the right to send the public records
12 requests, and the court doesn't have the right to issue a
13 protective order or other order stopping the public records
14 requests."

15 In *U.S. v. Murdock*, the Fifth Circuit held that
16 "Formal discovery" -- which is what Your Honor has asked me
17 about a lot this morning -- "and public records requests
18 are independent avenues that parties have a right to take
19 in litigation."

20 So those are four cases, usually we only have one,
21 four precedents from the Fifth Circuit Court of Appeals
22 that decides this issue. Honor Society has the absolute
23 right to send public records requests, and the Court, under
24 that precedent, is not authorized to issue a protective
25 order or a TRO.

1 There's other Fifth Circuit cases that help us. For
2 example, in *Cooper Cameron versus U.S.*, the Fifth Circuit
3 held that when looking at the legitimacy of a public
4 records request, the motive of the party seeking the public
5 records are irrelevant.

6 So to the extent that Honor Society has a malicious
7 intent, which it does not, but to the extent that it did,
8 its motive is irrelevant. It is still entitled to send
9 public records requests, and the Court can't bar it from
10 doing so based on a protective order or a TRO.

11 So I just cited to the Court five precedential
12 binding Fifth Circuit Court of Appeals cases. How many
13 Fifth Circuit cases does PTK cite on this point? Zero.

14 PTK doesn't even cite a single District Court within
15 the Fifth Circuit, because obviously the District Courts
16 have to follow the Fifth Circuit. And since the Fifth
17 Circuit has spoken five times, no District Court has done
18 what PTK requests this Court to do: Namely, issue an order
19 restraining Honor Society against its fundamental right to
20 send public records requests.

21 Now, I'd like to address a quick point that PTK
22 made, but I think it's outside the scope of the analysis.

23 THE COURT: Well, let me ask you this. You concede
24 that it was Honor Society who made the requests?

25 MR. NEWMAN: Yes. It wasn't David Asari acting

1 ultra vires. It was Honor Society, and David Asari is
2 associated with Honor Society. So, yes, Your Honor, it
3 was.

4 THE COURT: Is Mr. Asari also associated with Honor
5 Society Foundation?

6 MR. NEWMAN: I don't know the answer to that
7 question, Your Honor. And I suppose that is discoverable,
8 but I don't know that as I sit here right now.

9 THE COURT: And the only way it would be
10 discoverable is if -- I guess if Honor Society were asked
11 the question or if Honor Society Foundation were made a
12 party to the litigation; right?

13 MR. NEWMAN: Your Honor, I don't see how the
14 foundation should be made a party, because there aren't any
15 facts that indicate it did anything.

16 But absolutely with respect to HonorSociety.Org,
17 Inc., the party I represent here today, it's a fair
18 question to ask them. Did the foundation have anything to
19 do with this? Why were you using that email address?

20 THE COURT: And if they were told that the
21 foundation had something to do with it, then plausibly
22 under *Iqbal* and *Twombly* the foundation could be made a
23 party; right?

24 MR. NEWMAN: Yes, Your Honor, after they have those
25 facts but not before that.

1 Another point that I wanted to address, and there's
2 two more points I wanted to address on this point that
3 Honor Society has the absolute right to send public records
4 requests. Since PTK claims that there was a violation of
5 this law FERPA, and I can cite cases now, but, again, I
6 think it's outside the scope of what we're trying to
7 resolve.

8 That under FERPA, Honor Society is entitled to
9 student directories, including name and email address.
10 They are not confidential. Any member of the public can
11 request them, and any member of the public get them. To
12 the extent they do violate FERPA or any similar law, the
13 colleges would object and wouldn't produce the documents.

14 I don't think this is a FERPA case, but I just
15 wanted to point out that we respectfully disagree with PTK.
16 And I've read the law, and it's clear that with respect to
17 directories, some steps have to be made, but any member of
18 the public is entitled to them.

19 THE COURT: But if there is a violation, the
20 institution itself has a right to protect the students'
21 information; right?

22 MR. NEWMAN: The institutions have compliance
23 counsel familiar with FERPA. They are familiar with the
24 law, they make the objection, and they don't produce
25 documents. And then if a party requesting records has an

1 issue with that, the party requesting records can file an
2 action against the institution, but the colleges make that
3 determination based upon competent counsel who they have
4 responding to records requests.

5 It's outside the scope of what we're trying to
6 achieve here, because even if it did violate FERPA, which
7 it does not, it doesn't impact Honor Society's right to
8 send the request. It might impact their right to receive
9 responses, but that's between Honor Society and the
10 colleges, not between Honor Society and PTK.

11 There's been a lot of repeating that Honor Society
12 didn't tell its lawyers it was sending out public records
13 requests, and it's almost been presented as a gotcha. The
14 lawyers didn't know, so it must have been bad; and I feel
15 compelled to address that.

16 Honor Society has been sending public records
17 requests for 12 years. They are experts at it. They gain
18 a lot of competitive intelligence by that. Their service
19 offerings are based a lot on what they get from records
20 requests and surveys, and they don't tell their lawyers
21 what they're doing to generate competitive information.
22 That's just -- that's not normal, and so it doesn't
23 surprise me that Honor Society didn't call us to tell us
24 they were sending these out.

25 Now, these public records requests do mention PTK; I

1 can see why they would tell us, but I'm not surprised they
2 didn't. And I don't think the fact that I didn't know
3 about it until it was called to my attention by opposing
4 counsel, I don't think that that relates to the analysis.

5 THE COURT: But if there were discovery requests out
6 there, again, generally the parties have about -- and I
7 know what's in the standard order, a right to do 30
8 interrogatories or so and so many requests for production
9 of documents. I think I saw where there was an opportunity
10 for persons to do as many as 100 requests for production of
11 documents in this case I think. I may be wrong.

12 But if there was an interrogatory out there or a
13 request for production of documents out there that would
14 have required the same information that was received
15 through the records requests to have been turned over to
16 the other side -- or, I mean, the lawyers may not have
17 known of it. Now they do.

18 Again, doesn't it -- I understand Mr. Moradian does
19 this all the time, because that's how he does things. But
20 under the umbrella of the court filing in this case and the
21 rules that govern this case, would not -- well, what should
22 the Court do? Wait until the other side files a motion to
23 compel or a motion to do something, because they may
24 believe that the information -- and it may already be -- I
25 don't know if the parties have met and conferred about it.

1 They may believe that what was sent out might be
2 responsive to some earlier interrogatory or request for
3 production of documents, and should I just stay back and
4 wait for the magistrate judge to tend to any future filing
5 on that issue?

6 MR. NEWMAN: Your Honor, as I stand here, I'm not
7 prepared to respond to a motion to compel that has never
8 been filed.

9 It strikes me the information the Court is asking
10 about PTK might be entitled to, but I really need to think
11 through that. I haven't analyzed it. And if they are
12 entitled to it, they get it.

13 And as I noted, we are very transparent, and we've
14 provided a lot of documents that we do not believe fell
15 within the scope of prior document requests. But we've
16 provided them, because they were requested. And I think we
17 might provide them here under that circumstance, but I
18 can't commit to that as I stand here.

19 THE COURT: Separate and apart from their duty to
20 file a motion to compel, what obligation does a party have
21 to seasonably supplement any discovery?

22 MR. NEWMAN: So the rules are clear about a duty to
23 supplement discovery. So if there's a request for certain
24 documents, for example that were received between
25 January 1st and January 31st, and there's a production in

1 February, and then more January documents are discovered in
2 March, the parties are obligated to produce that. There's
3 a continuing duty under the rules.

4 Your Honor, I'd like to address the surveys. PTK
5 requests that this Court issue an injunction banning Honor
6 Society from sending surveys, at least with respect to the
7 five questions. I'm not totally clear, because their
8 papers indicate that it's more than just the five questions
9 they're looking to ban. They talk about anything that's
10 false or misleading that could relate to any prospective
11 customers. It's extremely broad.

12 And we note in our response that any order that
13 would stop Honor Society from sending a survey would
14 constitute an unconstitutional prior restraint. And
15 there's a whole body of law on prior restraints, and we
16 cite a lot of it.

17 And what really surprised me about PTK's reply in
18 support of its motion is it did not address prior
19 restraint. The Court can't issue a prior restraint; we
20 note that. We expected some argument like there's an
21 exception to the prior restraint rule, but PTK didn't even
22 use the words "prior restraint" in its reply in support of
23 its motion. And even today during argument, there was no
24 discussion about an exception to the law on prior
25 restraint.

1 The Court may not issue an order stopping the
2 surveys because of the prior restraint jurisprudence. And
3 I would suggest, Your Honor, that is undisputed, because if
4 it were disputed, PTK would have responded to it. And PTK
5 has not, because it is clear that the relief they seek
6 stopping Honor Society from sending any surveys at all, the
7 five questions or otherwise, would constitute an unlawful
8 prior restraint, and the Court may not issue that order.

9 THE COURT: What about an order that tracks what
10 Mr. Moradian says he will do, not send out these five
11 questions anymore, so would that be a prior restraint?

12 MR. NEWMAN: Absolutely, Your Honor.

13 THE COURT: If I grant an order consistent with what
14 he says he will not do?

15 MR. NEWMAN: Absolutely. There's no exception to
16 the prior restraint jurisprudence that indicates that if a
17 party is willing to do what the Court is ordering, that the
18 Court therefore has --

19 THE COURT: No. No. No. The Court is willing to
20 put in an order what he said he is willing to do. He said
21 that in his papers. This Court has not directed anything
22 yet.

23 But if I say, okay, because you've said I won't go
24 out there and march on the street anymore; then okay. I
25 say, well, I'll put that in an order, because you said you

1 won't do it.

2 So if I do what Mr. Moradian -- I understand you --
3 I thought the disagreement you had was that the protective
4 order says "what Mr. Moradian says and otherwise." If I
5 scratch out the otherwise portion and put in the form of an
6 order what Mr. Moradian said he will not do, I will not --
7 he -- that Honor Society cannot send out these five
8 questions in their current form.

9 Now, whether or not those questions are later
10 reconfigured and figured out a different way to say it and
11 all of that, you know, because I thought about different
12 ways they can say it to get the same information, for
13 example. But if I narrowly say he said he won't send out
14 these specific five questions, then that would be what he
15 said, not what the Court dictated; right?

16 MR. NEWMAN: No, Your Honor. That would be an
17 unconstitutional prior restraint, because there's an order
18 that a party may not engage in speech. So the fact that
19 Mr. Moradian swore he wouldn't do that is a separate basis
20 to deny the motion for TRO, because the relief sought is
21 moot. And the Fifth Circuit has noted that when there's
22 voluntary compliance, a TRO is always inappropriate.

23 But even more important than that, the Court is not
24 allowed to issue a prior restraint of speech, whether a
25 party agrees to it or not.

1 I'd like to talk about those five statements,
2 because there seems to be an assumption those five
3 statements were wrongful, and they were not. So the first
4 one was a question about PTK having an average \$2,500
5 scholarship value. When reading the declaration of PTK's
6 witness, she talks about how those are transfer
7 scholarships.

8 Now, let me tell the Court what a transfer
9 scholarship is. A transfer scholarship is where -- when a
10 for-profit institution wants to incentivize a community
11 college student to pay it even more money to attend the
12 four-year institution, the four-year institution gives it
13 money on the front end; that's called a transfer
14 scholarship. And that transfer scholarship is provided
15 whether the student is enrolled with PTK, enrolled with
16 Honor Society, or not enrolled with any institution -- or I
17 should say any membership club or honor society.

18 PTK did not give a student any advantage to
19 achieving the \$2,500 scholarship that they say is an
20 average, because any student would otherwise be entitled to
21 it. That advertisement to students that there's help with
22 \$2,500 average worth of scholarships, that statement is
23 false and misleading, so the survey question noting that is
24 not misleading and is entirely appropriate.

25 The top ten percent claim; PTK claims in

1 advertisements that its enrollees are in the top ten
2 percent of schools. We know that's false. There's
3 evidence in the record, because Honor Society did a survey.
4 It does lots of surveys. And the colleges have come back
5 and said that the students are far outside of the top ten
6 percent. Some are in the bottom half. So PTK representing
7 that all students are in the top ten percent, that is
8 false, which means that Honor Society's survey is not
9 misleading.

10 The golden parachute; Honor Society had an employee
11 named Rod Risely. He was investigated for sexual
12 harassment in the company. When he left, they paid
13 Mr. Risely \$3 million. Paying somebody accused of sexual
14 harassment \$3 million is a golden parachute.

15 THE COURT: According to whom?

16 MR. NEWMAN: Well, according to the common --

17 THE COURT: According to whom? You've cited a tweet
18 by Senator Elizabeth Warren. I mean, is she the person or
19 any person to explain what a golden parachute is?

20 MR. NEWMAN: So the way we would present that
21 evidence at trial if we had to, we would take a consumer
22 survey, and we would ask, what is a golden parachute?
23 Like, a survey expert would come in and do that.

24 What we did for purposes of this motion is we
25 searched the internet. We searched Google, we searched

1 ChatGPT, and it was clear that what we're describing as a
2 golden parachute: Paying somebody a lot of money when
3 they're accused of something on their way out the door;
4 that is a classic golden parachute.

5 THE COURT: What about paying them what they're
6 entitled to? What about paying them with stuff that they
7 had earned? What about paying them for the benefit of not
8 being sued by that person? That's done all the time.

9 Persons leave employment under suspicion, and rather
10 than fight off a future lawsuit, you sort of lay it out and
11 you let them go. It's just good that we cut our ties;
12 here's your money. That does not make that a golden
13 parachute, does it?

14 MR. NEWMAN: Yes, Your Honor, that's entirely a
15 golden parachute. The whole idea is the "golden" is money,
16 and the "parachute" is we're not going to have to worry
17 about future litigation. That is a golden parachute, what
18 the Court just described. So Honor --

19 THE COURT: Who says that they're not -- I mean, we
20 haven't gotten to that issue, that there will not be future
21 litigation based on --

22 MR. NEWMAN: I was responding to Your Honor's
23 hypothetical.

24 THE COURT: Oh, okay.

25 MR. NEWMAN: But my review of what "golden

1 parachute" means indicates that what Your Honor just
2 described is a golden parachute, and what was done with Rod
3 Risely was a golden parachute.

4 But if this is really an issue for trial, experts
5 will come in and state what the common meaning is, and the
6 Court will find that Honor Society was not misleading in
7 calling it a golden parachute.

8 I'll move to the next --

9 THE COURT: Okay. So that issue is one that would
10 be subject -- or any of these things, subject to some trial
11 on the merits?

12 MR. NEWMAN: No, Your Honor. Because it's being
13 made in the context of a tortious interference with
14 business advantage claim, and without the loss of a
15 customer, it doesn't matter whether that survey was
16 misleading or even entirely false. Because if you want to
17 show that that was a false statement and that it violated
18 the rights of PTK, then PTK needs to sue for something else
19 like defamation.

20 What they're suggesting, it was misleading and hurt
21 them, that's not a tortious interference claim. That's a
22 defamation claim. It may be a false advertising claim. I
23 don't think so, because I don't think the surveys were
24 advertising. But it's not tortious interference -- it's
25 not a tortious interference claim, and so it would never be

1 at issue at trial.

2 The next issue was whether a chapter advisor
3 embezzled funds. Robin Lowe embezzled funds as a PTK
4 chapter advisor, thus it wasn't misleading.

5 Next is whether Honor Society -- strike that --
6 whether PTK is the official honor society. We understand
7 that 95 years ago, PTK received a paper saying it is an
8 official honor society, not the official honor society.
9 And I don't think we can rely on a document that's over
10 100 years old when sending out advertisements to students
11 today, and so it's not misleading suggesting they're not
12 the official honor society. So those five statements --

13 THE COURT: Well, we do rely on old documents all
14 the time.

15 MR. NEWMAN: From an evidentiary standpoint, Your
16 Honor, it would be admitted. But from a weight of evidence
17 standpoint, I think a jury would disregard that as --

18 THE COURT: Does the document say that -- does the
19 document -- and, again, I don't know if I've seen it. Does
20 the document say whether it is a or an official or the? Do
21 we know what the document says?

22 MR. NEWMAN: My understanding is it says it's "an
23 official honor society," not the official honor society.

24 THE COURT: Okay. And nothing precludes Honor
25 Society from -- if it doesn't say "only official," then

1 that means that there could be other honor societies?

2 MR. NEWMAN: Yes, Your Honor.

3 THE COURT: Okay.

4 MR. NEWMAN: So Honor Society having the absolute
5 right to send out public records requests and surveys means
6 that a tortious interference claim, whether with contract
7 or business advantage, fails as a matter of law.

8 If Honor Society does something it has the right to
9 do and PTK suffers a loss, that's not tortious
10 interference. And there isn't a likelihood of success on
11 the merits, because Honor Society had the absolute right to
12 do what it did.

13 I'd like to move to irreparable harm --

14 THE COURT: Let me go back one step to the person --
15 the advisor issue, because I know PTK says, well, we had
16 nothing to do with that particular person. She was an
17 advisor; she didn't steal PTK money, but she stole money.

18 So what was the specific language of the survey
19 question?

20 MR. NEWMAN: The survey asked whether it would
21 impact PTK's reputation if it had hired a chapter advisor
22 that embezzled funds. And a chapter advisor did embezzle
23 funds, so that question is not misleading.

24 I'd like to move on to --

25 THE COURT: Did it hire the chapter advisor before

1 or after she embezzled the funds? I presume it was before.

2 MR. NEWMAN: The advisor?

3 THE COURT: Was the advisor hired --

4 MR. NEWMAN: Advisor for PTK and embezzled funds
5 relating to PTK.

6 THE COURT: Okay. All right.

7 MR. NEWMAN: So that's not misleading, and even if
8 it is misleading, that doesn't qualify as tortious
9 interference with contract, because no customer was lost.
10 It might be defamation, but that's not a claim that's
11 before the Court.

12 I'm going to talk a bit about irreparable harm.
13 I've already talked about how there's no likelihood of
14 success, because there wasn't a customer lost. Therefore,
15 there's no likelihood of success on the merits, and the
16 case should be dismissed.

17 I've talked about how Honor Society has the absolute
18 right to send public records requests. The Fifth Circuit
19 repeated that four different times. It has the right to
20 send surveys, and the court may not issue an unlawful prior
21 restraint.

22 But, also, PTK must show irreparable harm in order
23 to get a TRO, and this is another area where if we had more
24 than two and a half days to prepare our papers, we would
25 have done a lot more. Because we did a survey -- and I'm

1 happy to file this with the court if the Court wants to see
2 it, but we did a survey of tortious interference claims
3 where a motion for TRO was brought all across the country.
4 We found 27 cases, and all but a handful were denied
5 because there is rarely irreparable harm with a tortious
6 interference case.

7 Why? Because you're losing a customer or you're
8 losing a contract, and contracts have value. If customers
9 aren't signing up and they're \$60 a customer, you multiply
10 60 by the number of customers you lost, and that's the
11 harm. If there's compensation by money damages, there's no
12 irreparable harm. And so in tortious interference cases,
13 there's almost always money damages. There are in this
14 case as well.

15 Now, I said that all but a handful were denied, so
16 what about that handful? In that handful, there were
17 motions for TRO, but it wasn't limited to tortious
18 interference. There was stolen trade secrets, one was a
19 copyright case, and there was one outlier case that PTK
20 relies on heavily for obvious reasons. That case is called
21 *Multipplan*, and in *Multipplan*, there's thin analysis by the
22 District Court. There are egregious facts.

23 And the *Multipplan* court makes a huge mistake that
24 the parties also made in briefing, and so I want to correct
25 that mistake today. The *Multipplan* court said that

1 reputational injury can be harm in a tortious interference
2 case; that is not true. And *Multiplan*, in support of that,
3 cites two other cases, one is a trademark case, one is a
4 false advertising case. Neither are tortious interference
5 cases. Other than *Multiplan*, we haven't found a single
6 case all across the country where reputational injury is a
7 damage that's recognized for tortious interference.

8 Again, why? Because tortious interference is with a
9 contract, and reputational injury is not a contract-type
10 injury, and so it cannot be recovered under a tortious
11 interference case.

12 I made a mistake that I wanted to note. In
13 *Multiplan*, it's cited for reputational damages. It's a
14 false advertising case and an FCC case, a Federal
15 Communications Commission case, about incumbent telephone
16 carriers. But it wasn't about tortious interference, and
17 neither of those cases were tortious interference cases,
18 and so reputational injury being a damage allowed is not
19 applicable to tortious interference cases.

20 I also want to point out another mistake PTK made in
21 its opening brief. I wish we would have done this in our
22 response. But I think it's important to do it here,
23 because it's a glaring mistake. In its opening brief, PTK
24 cited *Better Business Bureau of Metro Houston versus*
25 *Medical Directors*, 681 F.2d 397, and PTK writes that in

1 that case, the court granted TRO seeking injunctive relief
2 for tortious interference with business relations where
3 defendant harassed plaintiff's customers and caused
4 plaintiff to lose customers and harmed plaintiff's
5 reputation; that is just not true.

6 In *Better Business Bureau of Metro Houston versus*
7 *Medical Directors*, there's no mention of a contract. There
8 was no mention of tortious interference. It was not a
9 tortious interference case. It was a false designation of
10 origin case; that's a Lanham Act trademark-related case,
11 not a tortious interference case. So the statement that
12 PTK made that it was a tortious interference case was a
13 huge mistake. They were probably racing to get their
14 papers done, too, so I understand it. But it is glaring,
15 and I thought I'd call it to the Court's attention.

16 And then finally, I'd like to note that in order to
17 suffer irreparable harm, there has to be a harm they can
18 prove, and here there is no harm they can prove.

19 They indicate that during a two-week period sales
20 dropped by 15 percent. But at the same time that sales
21 dropped by 15 percent, they lost mail services, because
22 Mailchimp shut them off for violating Mailchimp's terms of
23 services against unsolicited bulk email and Microsoft
24 flagged them for phishing.

25 Honor Society is not responsible for that, but the

1 fact that PTK only lost 15 percent in light of these two
2 major events seems low to me. I would have expected it to
3 lose a lot more than that. But that explains any loss in
4 revenue is not due to Honor Society's surveys, and even if
5 it was, Honor Society had the absolute right to send those
6 surveys so it wouldn't qualify as tortious interference.

7 I'll quickly address a couple of the other elements.
8 Balance of the equities; Honor Society, as we discussed,
9 has a right under statute to send public records requests.
10 PTK notes that we cited Mississippi law, and they asked,
11 like, why didn't you cite other laws? And the answer is
12 because we're racing to get things done, and I don't think
13 the Court would appreciate a 50-state analysis.

14 But from what we've seen, public records requests
15 statutes are very similar from state to state, and
16 interestingly, PTK says that we omitted that. But PTK does
17 not dispute that. PTK does not point to a single state
18 that has a different public records-type analysis.

19 And in fact, several states -- like, PTK says, what
20 about New Hampshire? In New Hampshire, it's a
21 constitutional right that a party has to send public
22 records requests. It's under the Bill of Rights in New
23 Hampshire.

24 So if there's an injunction against public records
25 requests, Honor Society would lose its fundamental right to

1 send public records requests. It would be subject to a
2 prior restraint against speech for surveys. It wouldn't be
3 able to generate competitive researching data that it uses
4 to improve services and market to students and better
5 compete, and that loss is substantial.

6 THE COURT: Going back to those five questions,
7 though. Do they have the unmitigated right to ask a
8 specific question?

9 Can they go back and rephrase the question and
10 solicit the same information? I'm not a marketer; I don't
11 know.

12 But if they were to send the same question about the
13 golden parachute, I'm not suggesting that this would pass
14 the test. But if they were to use the word golden
15 parachute, and say golden parachute as described by Senator
16 Elizabeth Warren because that's what you rely on in your
17 tweet.

18 MR. NEWMAN: It was an example. It wasn't a
19 complete -- we were quickly putting together papers, and it
20 was an example.

21 THE COURT: Okay. So if the question were modified
22 in that way, do you think the response from the persons
23 would be any different?

24 Because what they've complained about now -- now, it
25 may be there are some other complaints once the questions

1 are -- once Honor Society decides to sort of recalibrate
2 these five -- because right now, Mr. Moradian says I'm not
3 going to send these out, and I'm going to take him at his
4 word. I might take him at his word he's not going to send
5 these out. That does not necessarily mean that he cannot
6 go back and recalibrate the questions.

7 And if he recalibrates the questions and they have
8 an issue with those questions, then they come back I guess.
9 But maybe the parties will meet and confer to figure out
10 what those questions might be. I don't know if that would
11 sort of interfere with persons' competitive instincts to
12 sort of work it out. But would that -- I mean, the
13 violation of constitutional rights in New Hampshire or
14 statutory rights in other states, they don't have the
15 unlimited right to a specific question, do they?

16 MR. NEWMAN: I think that's a question for a
17 different day. The question here is whether the Court can
18 issue a prior restraint, and the jurisprudence is clear
19 that the Court cannot.

20 But the question for the different day is, yeah, I
21 think Honor Society has the absolute right to ask those
22 questions. And if they recalibrate it, I'm sure PTK would
23 take issue with it, because we believe this case is not
24 really to vindicate rights but to try and shutdown Honor
25 Society. And by bringing an emergency motion for a TRO, it

1 inflicts a lot of harm on Honor Society. I think it would
2 do so regardless of how the question was framed.

3 THE COURT: Thank you.

4 MR. NEWMAN: Which leads me to the next issue, the
5 request for a protective order. The Fifth Circuit Court of
6 Appeals in a binding and precedential decision called *June*
7 *Med versus Phillips* held that protective orders apply only
8 to discovery, not to activities that occur outside of
9 discovery. And this is in line with the Fifth Circuit's
10 other cases about how public records requests is an
11 independent avenue from discovery requests.

12 And because of that case, the Court can't issue a
13 protective order for activities that don't occur in the
14 discovery process. The Court can't issue a protective
15 order against a party's own independent investigation, and
16 the Court can't issue a protective order certainly against
17 a party engaging in competitive strategies like sending
18 surveys and records requests that aren't necessarily going
19 to be used for the case.

20 THE COURT: Aren't necessarily, but can be; right?

21 MR. NEWMAN: Of course they can be.

22 THE COURT: They can be so --

23 MR. NEWMAN: But the Fifth Circuit says they can't
24 be.

25 THE COURT: But they will be subject to the rules of

1 discovery in that instance; right? I'm just asking. I
2 mean, you've told me what the Fifth Circuit has said.

3 MR. NEWMAN: They would not --

4 THE COURT: *June Medical* dealt with abortion, I
5 think; right?

6 MR. NEWMAN: They would not be subject to the rules
7 of discovery. The Fifth Circuit has made that clear.
8 Public records requests, one set of rules. Discovery,
9 another set of rules. When a party exercises its FOIA
10 rights or state public request statutory rights to get
11 public records, it's not subject to the discovery process.
12 Perhaps those records --

13 THE COURT: Even though the request may touch on
14 both?

15 MR. NEWMAN: Absolutely not subject to the discovery
16 process. A protective order would be inappropriate under
17 those circumstances, because the Fifth Circuit has found
18 they are independent avenues.

19 There was discussion of NAVEX and the subpoena
20 served on NAVEX that Judge Ball found wasn't appropriate,
21 because it didn't relate to this case. That an order
22 issued considering NAVEX is not germane to the public
23 records requests on schools. It was a subpoena in the
24 discovery process, and the discovery process has to be
25 tight, and discovery imposes burdens on third parties, a

1 subpoena does in any event, and requires them to do stuff
2 they're not otherwise required to do by law.

3 Whereas, a public records request only asks a party
4 to do what they must do under law. So the fact that a
5 subpoena was rejected under NAVEX --

6 THE COURT: A subpoena, you're required to do that
7 by law, right, Rule 45; right? You said by law you must
8 turn over stuff. You must respond to a subpoena.

9 MR. NEWMAN: Right. There's a lot of burden on a
10 party when they receive a subpoena, and that's why the
11 Court is there to govern the discovery process and not
12 allow subpoenas that are inappropriate. But the standards
13 are different with public records requests.

14 THE COURT: And let me ask you this. So I assume
15 Honor Society agrees that the subpoena that was issued to
16 NAVEX was inappropriate because Judge Ball -- I don't know
17 if there was a formal motion to quash that was filed, but
18 he told y'all to back away. I guess that ruling was never
19 appealed to this Court, so shall I assume that you agree
20 that it was inappropriate?

21 MR. NEWMAN: It's the law of the case, Your Honor,
22 but that's with respect to NAVEX. It doesn't relate at all
23 to public records request.

24 So I'd like to take a step back and talk about what
25 this case is really about. This case is about competition.

1 So PTK, for over 100 years, has been the undisputed leader
2 in community college honor societies. Its market share was
3 bordering on being a monopoly. And then Honor Society,
4 this small upstart, came out of nowhere and started
5 competing.

6 Honor Society is an inclusive membership club where
7 any matriculating student into a community college can join
8 immediately upon matriculation, and there's lots of great
9 benefits that Honor Society offers. So it has generated
10 significant membership from new students.

11 PTK does not offer membership until after the first
12 semester. By the time PTK invites students to join, many
13 of them have already joined Honor Society, and as a result,
14 PTK has lost significant market share. Based upon the
15 surveys that Honor Society has done, it appears that PTK
16 has lost over a third of its membership to Honor Society
17 through lawful and competitive measures.

18 So of course PTK is troubled by Honor Society. PTK
19 is losing a business that it had for over a hundred years,
20 and this lawsuit wasn't filed to vindicate rights, but
21 because it's attempting to shutdown Honor Society.

22 Now, Honor Society is run by Mike Moradian. He is a
23 UCLA-trained economist who's a specialist in data. He has
24 operated his business through use of surveys and public
25 records requests to gather competitive data, learn about

1 the market, so he could constantly improve services for
2 student and offer what PTK, the incumbent, has been unable
3 to offer.

4 And PTK filed this lawsuit for trademark
5 infringement alleging that, for example, a gold stole is
6 trademark infringement, even though every honor society has
7 a gold stole. Alleging that the colors blue and gold on a
8 website are infringement, even though they don't have a
9 registered trademark for blue and gold. They don't own
10 blue and gold. The case lacks merit. It's a transparent
11 attempt to shutdown Honor Society, and this motion is more
12 of that.

13 There is no urgency here. There is no emergency
14 that required our staff to be pulled off of all their other
15 cases, to stay up all night long, to research and analyze
16 the papers that PTK spent weeks preparing, and to respond
17 to it.

18 In fact, I would suggest that after we filed our
19 opposition that PTK should have withdrawn its motion,
20 because the Fifth Circuit is clear. Records requests are
21 allowed regardless of intent, even if there was malicious
22 intent. Survey response is allowed, and an order against
23 it would be an unconstitutional prior restraint. And
24 without identifying a lost customer, PTK fails to state a
25 claim for which relief can be granted and cannot succeed on

1 the merits; so Your Honor should deny the motion for TRO.

2 I'll speak for probably no more than two minutes
3 about the motion for expedited discovery. The standard
4 there is good cause. For the reasons I stated, PTK does
5 not have good cause. Expedited discovery would require the
6 parties to fly around the country doing deposition. It
7 would require insane response times to discovery requests
8 that aren't necessary or appropriate.

9 Those discovery requests can be asked during regular
10 discovery. They don't need to be done on an expedited
11 basis. I would like to start getting seven hours of sleep
12 again. I don't want to have to now race into this
13 discovery process that is totally unnecessary. So the
14 Court should deny that motion as well.

15 THE COURT: I want to get seven hours of sleep, too,
16 but y'all won't allow me to do that. So if the Court
17 allows the supplemental complaint, which would -- I think
18 is there a counterclaim or something that Honor Society
19 wished to proceed with?

20 MR. NEWMAN: Yes, Your Honor. We have actually
21 prepared a complaint, but I don't think it's ready to
22 distribute to PTK's counsel. But I would expect that to
23 happen within the next couple of days. We're going to ask
24 that PTK stipulate to it. If PTK does not, we may file a
25 motion to supplement here, or we may file a separate

1 lawsuit in California. But there is that complaint, and
2 Honor Society does intend to file it.

3 THE COURT: Okay. And if you file it in California,
4 I assume there may be a motion possibly to transfer out
5 here, because there's this existing litigation.

6 All right. That's fine. But if the Court were to
7 allow them to amend their complaint and allow you to amend
8 yours, they have said that they suspect that the current
9 discovery deadline could still be met. That is for the
10 next five months, four months now, the discovery could be
11 done.

12 With respect to the potential claims that you expect
13 to bring, could discovery be done on your claims during
14 that same period?

15 MR. NEWMAN: I don't know. But if we anticipate
16 discovery cannot be done in that timeframe, we'd bring a
17 motion before Judge Myers to extend the case schedule.

18 THE COURT: Okay. So if the Court denies the motion
19 for TRO for the reasons that you've expressed or for other
20 reasons, because I do know that there are damages
21 involved -- that there are damages. And to the extent Phi
22 Theta Kappa proves whatever claims it says they can prove,
23 those damages, those injuries could be cured by -- they
24 will be asking for monetary damages. Maybe they will ask
25 for other stuff, too.

1 But to the extent it could be -- monetary damages
2 could be awarded against Honor Society, isn't that a
3 sufficient basis to deny the TRO?

4 Or assuming there's a preliminary injunction going
5 forward, would that be a sufficient basis if they can show
6 that they've been hurt, harmed, and that money will be --
7 that money damages are a sufficient remedy?

8 MR. NEWMAN: Yes, Your Honor. From our review of
9 tortious interference cases across the country, we only
10 found one case, *Multiplan*, where there was irreparable harm
11 or injunctive relief is appropriate.

12 In the rest of the cases, it's clear that money
13 damages can compensate the plaintiff. Because they have to
14 be contract-type damages, and contract-type damages
15 generally don't lead to irreparable injury.

16 Thank you.

17 THE COURT: Thank you. We're going to take another
18 break for about ten minutes, Mr. Wallace, and then I'll
19 come back for your rebuttal.

20 MR. WALLACE: Thank you, Judge.

21 THE COURT: Ten or 15 minutes for the court
22 reporter.

23 MS. SUMMERS: All rise.

24 (A brief recess was taken.)

25 MS. SUMMERS: All rise.

1 THE COURT: You may be seated.

2 All right, Mr. Wallace.

3 MR. WALLACE: May it please the Court? You have
4 been patient with us, and I'm going to do the best I can to
5 get everybody to lunch.

6 I want to begin with the proposed supplemental
7 complaint. The only understanding I have of why he thinks
8 it would be futile is that we have not identified a
9 contract that has been broken or a customer, potential
10 member that we have lost.

11 In saying that, he's relying on appellate cases
12 where the Court looks at the end of the day, and says you
13 didn't prove a broken contract; you lose. You didn't prove
14 you lost a customer; you lose. He doesn't have a case
15 where a court on the front end has said you didn't give me
16 the name of the customer you lost, you didn't give me the
17 name of the party that broke the contract; therefore, you
18 can't even go forward. No such case exists.

19 We know we have to identify somebody down the road,
20 but we think they exist now in the evidence you have before
21 you now is Dr. Tincher-Ladner's declaration. They filed a
22 motion to say that it shouldn't be considered.

23 Your Honor has the pleasure of trying cases all the
24 time. Most of us never get to do it anymore, but you know
25 how Rule 701 works, which is that people are allowed to

1 give their opinion if their experience tells you that the
2 opinion might be pretty good.

3 Dr. Tincher-Ladner has worked for years -- they call
4 Perkinston Mississippi Gulf Coast Community College these
5 days. I'll never get used to that. But that's where she
6 was. She's worked at Southern Mississippi for years. She
7 has now spent years at Phi Theta Kappa. She knows how
8 institutions of higher learning think. She knows how they
9 work, and she knows there's not a single one of them
10 anywhere in the world that wants to get a document request
11 and have to deal with lawyers.

12 He's suggested the reason those people are calling
13 her up is to give them the notice they are entitled to
14 under the law of their home state. She was on the other
15 end of the phone calls. It's in the declaration. Nothing
16 in there about the law requires me to tell you that they've
17 made this request.

18 Those people are calling to say why are we getting
19 these requests, and what are we supposed to do about it?
20 What can you tell us? That's what's in the record before
21 this Court. Her opinion that she is losing customers right
22 now is backed up by the fact that our joinders this year
23 are down 15 percent.

24 Now, she can't tell you how much of that is caused
25 by the economy, how much of that is caused by what they've

1 been doing to us for the last eight or ten years, and how
2 much is caused by what they're doing to us this March. But
3 she knows she's bleeding, and she reasonably believes we
4 are damaged right now.

5 We don't know where the injury is, but we're going
6 to find it. So you have testimony from an experienced
7 witness that you can believe when she tells you that we are
8 damaged. There are people we're losing, and if you don't
9 stop it not only are we going to lose these people, but
10 these kids who have to join Phi Theta Kappa before they
11 graduate or they never get the chance, are never going to
12 get that chance and never get the benefits that I know from
13 living in this state all my life it's been providing to
14 junior college kids forever and ever.

15 So, yes, there's damage. Yes, we're entitled to
16 amend our complaint.

17 Oh, one other thing. He closed by saying, you know,
18 we're in a competition. It is our job to take market share
19 away from Phi Theta Kappa; that's what we're trying to do
20 every day. Why in the world would you not believe that's
21 what these surveys are trying to do, and in fact, they're
22 accomplishing it.

23 They brag that they take business away from us.
24 Well, they probably do. And if they're taking business
25 away from us under these surveys, it is unfair competition.

1 It is actionable under the two Mississippi counts we've put
2 before you, and we think we are entitled to go forward and
3 find where there damage is and present it to you in this
4 courtroom.

5 THE COURT: Let me ask you specifically about that
6 particular issue, and, again, you might have to look to
7 Mr. Polak.

8 MR. WALLACE: I might.

9 THE COURT: But the discovery requests that have
10 been propounded in this case, are there any discovery
11 requests, interrogatories, or requests for production of
12 documents that Phi Theta Kappa believes should be responded
13 to based on what you've seen in the survey requests or
14 either the records requests?

15 MR. WALLACE: I'll give you one example that I know
16 of, and we don't want to ask you to do Judge Myers' work.
17 If we find out they haven't done what they should have been
18 doing, we'll take it up with him.

19 But, yes, we've been asking them from the beginning
20 for surveys they've taken in the course of their business,
21 and their answer was we don't have any. And we're finding
22 out here that, like, they do surveys and they do records
23 requests all the time. Now, look, they may have an
24 explanation for that, and we're going to give them a chance
25 to give that explanation to Judge Myers.

1 But, yes, Your Honor, we have asked for a lot of
2 things that should have been disclosed. Records requests,
3 some of these records requests do relate to us. They've
4 produced one in discovery that they took in 19 -- in 2021.
5 I don't know what the subject was, but it was within the
6 scope of something we asked for, so they gave it to us.

7 The interesting thing about that is David Asari sent
8 the records requests out, but he used his Honor Society
9 email to do it. These records requests Asari sends it out,
10 and he sends his Gmail. He doesn't want to have Honor
11 Society's fingerprints on it, anyway. When we get to the
12 point of malice and intent, I think that's going to turn
13 out to be a very big fact.

14 So the answer to your question is yes. But I don't
15 know enough, and I don't think you want to know enough to
16 do Judge Myers' work for him. We'll see what's in those
17 62,000 pages, and we'll see what we need to do about it.

18 So I do want to say -- I do want to say something
19 about the First Amendment. Prior restraint is a part of
20 First Amendment law, but it applies where the First
21 Amendment applies. And Your Honor has said in *Bond*
22 *Pharmacy*, and its right, that there is no protection, First
23 Amendment protection, for misleading commercial speech.

24 There's no protection for harassment either, and as
25 I have explained, I think we're getting harassed on the

1 rebound. They send these surveys to our kids, they send
2 the records requests to our partners, and the harassment
3 comes from them to us. That's what's going on here.

4 What the Fifth Circuit said in discussing the First
5 Amendment and prior restraint in the *Test Masters* case,
6 "The courts do have the power to enjoin harassing
7 communications." That's not a prior restraint, because
8 it's commercial. I'm not even sure harassing communication
9 is commercial speech, but it's not protected.

10 There is enough evidence protected in the -- enough
11 evidence in the record to justify an injunction order
12 prohibiting Singh from threatening or harassing TES. So if
13 you find what they're doing is not protected by the First
14 Amendment, then they -- then you have the authority to do
15 something about it.

16 I do want to say something about irreparable injury.
17 Judge Guirola -- they mentioned the *Multiplan* case; they
18 say it's an outlier, but it doesn't outlie very far. It's
19 in Gulfport. This is Judge Guirola's opinion. It's Judge
20 Guirola's opinion in an intentional interference with
21 business advantage lawsuit. He grants the TRO, and he
22 says, "The Fifth Circuit has held that damages to a
23 business reputation can constitute irreparable harm."
24 Damage to Phi Theta Kappa's business reputation is the
25 whole point of this case.

1 Your Honor, you asked, I think, about the actual
2 survey question on the chapter advisor. You know I don't
3 do screens. I have it printed out, and I think I read it
4 to you the first time I was up. "Does it hurt the
5 reputation of Phi Theta Kappa that a chapter advisor was
6 arrested in February 2024 for allegedly embezzling funds?"

7 And if I may bring it to you, I know they've got it.
8 It's what you sent.

9 Does it hurt the reputation of Phi Theta Kappa? You
10 bet it does. You absolutely bet it does. That's the whole
11 point. That's the point of the survey: Tell us what we
12 ought to use to damage the reputation of Phi Theta Kappa.
13 That's what he says he's trying to do to deprive of our
14 kids of the opportunities that we can give them and have
15 been giving them for almost 100 years.

16 Judge Guirola says that's irreparable injury and I'm
17 going to issue a TRO, and we think you ought to do exactly
18 what Judge Guirola did.

19 I'll say one thing about Rule 26, and then I'll sit
20 down. As I'm sure you know, the *Mississippi Department of*
21 *Wildlife* case is not a Fifth Circuit case at all. It's a
22 Mississippi Supreme Court case, and it doesn't say anything
23 about interactions between -- between discovery. It tells
24 generally that if you're entitled to get something, you
25 ought to be able to get it. We don't dispute that. If

1 they're entitled to get it, Judge Myers will give it to
2 them.

3 The Fifth Circuit cases they've cited are all about
4 the interaction between FOIA and ongoing litigation. This
5 isn't FOIA. This is about the interaction between this
6 litigation and the laws of 49 other states that they have
7 not laid before you, but that's where they're going after
8 our information. None of those are binding.

9 I do think that you should look very carefully at
10 the *Heinrich* and the *Hartman* cases. That's a case where
11 the district judge says, my magistrate already told you
12 what to do and you're doing something else; and I'm telling
13 you to stop it. Your former magistrate told them what to
14 do: Bring their requests to us, have them reviewed in this
15 court, and have the discovery done limited to the real
16 issues before this Court.

17 They didn't like that, and Mr. Moradian, as soon as
18 Judge Ball was gone, decided he was going to take matters
19 into his own hands. I don't like -- I generally try not to
20 look into the hearts of people to see why they do what they
21 do, but the calendar just screams out to me on that one.

22 I think you've got the same authority to back up
23 your magistrates as the judge did in *Heinrich* and *Hartman*,
24 and say as long as you're in this Court, you're going to
25 play by our rules.

1 At the very least, we think we ought to have a
2 temporary restraining order. They haven't even tried to
3 justify that survey. It's harassment, it's improper
4 commercial speech, we ought to have a TRO on that in a
5 heartbeat.

6 And at the very least on these records requests, you
7 can issue an order that says before you send a record
8 request out to somebody, you tell Phi Theta Kappa that
9 you've done it, so they don't have to wait for people to
10 complain. We can get busy and defend our own rights.

11 We'd like you to give us that opportunity. We think
12 we can get all of this discovery done and try this case,
13 and when you do, you will see from beginning to end this is
14 not a case of fair and lawful competition. It is a case of
15 unfair and unlawful competition. It needs to stop, not
16 only for the protection of my client, but for the
17 protection of kids that they exist to serve.

18 We thank you for your patience. I told you I'd let
19 everybody go get lunch. I'm going to sit down unless
20 you've got some questions.

21 THE COURT: Under Judge Myers' existing order, it
22 said that the plaintiffs' expert designation might be due
23 around May 15th. I presume the defendants will have their
24 designation due either June or July?

25 MR. WALLACE: One correction on that, Judge.

1 THE COURT: Okay.

2 MR. WALLACE: We're plaintiffs, they're
3 counter-plaintiffs. Our plaintiff expert and their
4 counter-plaintiff's experts are all due on May 15th, and
5 then, yes, we've got 30 days to -- everybody's got 30 days
6 to respond to that. Is that right?

7 MR. POLAK: That is correct.

8 THE COURT: Okay.

9 MR. WALLACE: That's my understanding, Judge.

10 THE COURT: Okay.

11 MR. WALLACE: Thank you, Judge. We appreciate your
12 patience.

13 THE COURT: Thank you. I may or may not write
14 something on this, because I don't want to run into -- I
15 don't want to put a pause on what people can be doing. I'm
16 just telling y'all off the cuff right now what I'm inclined
17 to do.

18 I think the supplemental complaint, it just makes
19 complete sense to the Court to allow the supplemental
20 complaint. I guess you don't need any formal -- I mean,
21 you know, you don't need any analysis on that.

22 I hereby find that I have the discretion to allow
23 the parties to file their supplemental -- PTK to file their
24 supplemental pleading. They've identified what that
25 pleading is. They've shown it; I think it's a part of the

1 exhibits to the motion, so nobody's going to be surprised
2 about what the issue is.

3 And I know I haven't ruled on the earlier complaint,
4 but we are drafting something on the docket number 79, I
5 think it is, and whatever else has happened from now until
6 then. But I am inclined to allow their supplemental
7 pleading.

8 Now, I do know the other side suggested that they're
9 either working on it or -- and they should have a right to,
10 and, yes, if you all decide that you're pursuing some other
11 claim, whether you file it here or in California, if it
12 gets filed in California and gets sent back here, it's
13 going to be subject to this same -- I mean, it will come
14 back to Mississippi. It will be a new civil action number
15 here. It's likely that the clerk's office would see that
16 it's a like or related case, and it will come back here.

17 So think long and hard about where you might want to
18 bring that case. I will give you seven days. Is that
19 enough time, or do you want 14 days?

20 I mean, what I don't want to do is slow down or
21 interrupt Judge Myers' order at this point in time.

22 MR. NEWMAN: Your Honor, I'd be grateful for
23 14 days, and we do want to bring it here.

24 THE COURT: Okay. I'll give you 14 days.

25 MR. NEWMAN: Thank you.

1 THE COURT: All right. So with respect to the
2 supplemental complaint, I do think under the existing --
3 and the parties can correct me, but I think under the
4 existing scheduling order, obviously the parties will be
5 allowed to submit, propound discovery to one another on
6 those issues, whether it needs to be expedited now or not.
7 Because we know when discovery concludes, I think should be
8 left up to y'all.

9 So, you know, whether it's expedited -- and I'm not
10 going to require people to have to respond in less than the
11 30 days there normally would be. Because there's ongoing
12 discovery now as I appreciate it, because the discovery
13 deadline now is in August. So if -- you know, I think
14 there would still be one discovery deadline. The operative
15 discovery deadline for these new cases, for these new
16 complaints and counter-complaints is still going to be
17 August, whatever date that is that Judge Myers has set;
18 that's the operative discovery deadline.

19 Now, of course -- of course as the parties move
20 forward in their litigation, and, you know, parties could
21 raise issues with Judge Myers about whether or not that is
22 the appropriate deadline. I'm not going step in -- I'm not
23 going to wade in that right now.

24 So with respect to the TRO, I'm going to reserve
25 ruling on that for right now and preliminary -- well, for

1 the TRO for right now. There's a couple of things I want
2 to look at.

3 But I'm strongly inclined to do what Mr. Moradian
4 said he would do, but, of course, it looks like that might
5 be the minimum. It might not be the maximum that I could
6 do. It's not even the minimum I could do, I don't think.

7 But the surveys -- it's my understanding based on
8 everything that I've heard so far that those specific
9 questions are not being asked, but there more than likely
10 will be some further guidance from this Court.

11 I do think discovery allows Phi Theta Kappa to get
12 the responses to all of that stuff that they have -- that
13 Honor Society has received, and of course proper objections
14 can be made. But I think my -- we'll see what my final
15 ruling is on that, but I'm inclined to say any documents
16 that were received in response to the records requests and
17 surveys should be turned over to the other side.

18 Again, the rules of discovery are quite broad under
19 26. It may not be admissible in evidence at the end of the
20 day, but I generally think information like that is
21 discoverable. These are the calls that the magistrate
22 judges make all the time, but I want to keep this case
23 going.

24 To the extent Phi Theta Kappa believes that their
25 new claims -- I find that those new claims are part and

1 parcel. I have the discretion under Rule 15, under Rule
2 16, under Rule 26 to allow the filing of those new claims
3 to have them all in this case. I think it helps the Court
4 with the underlying rules of civil procedure. Rule 1 leads
5 to the just, speedy resolution of all issues. We just need
6 to make sure all issues are here, so that we can have all
7 issues decided.

8 But this Court can properly decide as soon as
9 possible, so to the extent anybody has anything to bring, I
10 think this is the appropriate place to bring it. I so find
11 that you can bring it; that the discovery based on any of
12 these new claims can be done under the existing scheduling
13 order Judge Myers just entered with the discovery deadline
14 being sometime in August of 2024.

15 And I hope to give you a very short written order on
16 the TRO, very short, and it may be so short in fact that I
17 might call you all and tell you what it is. And do it that
18 way because I don't want anything to slow down this case,
19 and I certainly don't want me to slow it down.

20 You'll be getting rulings on the other pending
21 motions that I mentioned earlier. I think you'll be
22 getting that really soon in the next few days or so, and so
23 that's my interim ruling for now. I have not ruled on the
24 TRO request.

25 MR. NEWMAN: Your Honor, we have 14 days to file an

1 amended complaint or a motion for leave to file an amended
2 complaint?

3 THE COURT: No. You have 14 days to file it.

4 MR. NEWMAN: Thank you.

5 THE COURT: You can file it, and of course any
6 response to those motions will be filed. No, I don't want
7 to do anything that slows down the process, because leave
8 to file it would mean that you're responding saying you're
9 disagreeing about whether or not it should be filed.

10 Yeah, we'll be ready to tee up these issues of
11 whether the complaints survive Rule 8, Rule 12. We'll be
12 ready for all that, so let's keep this case rolling.

13 And as I tell all the parties, and I may have
14 mentioned it to you when we were on the phone the other
15 day, as I tell all parties in every case, criminal or
16 civil: Every step of the process is another opportunity
17 for the parties to seek resolution. Every step of the
18 process is another opportunity.

19 Yes, Judge Ball was on the case; he's no longer on
20 the case, that was an opportunity. Judge Myers is on the
21 case; he's submitted a new order. We have had this hearing
22 now; this is another opportunity for the parties to figure
23 out whether or not this case can be resolved. I'm one of
24 the ones who -- and all of our judges are pretty adamant
25 about parties taking the case out of the hands of the court

1 and juries and whatnot, giving you the full opportunity to
2 see if you can seek some resolution. Because we know if
3 this case continues to go, parties are going to be
4 expending money and resources, and, you know, you've got
5 the discovery deadline, the experts. After that you'll
6 have a trial. After that you'll have a bunch of motions I
7 imagine post discovery. You'll have a trial. And at the
8 end of the day, the trial does not even, in many cases,
9 resolve a case, because parties have the right to appeal.

10 This case has been -- was filed in 2022. By the
11 time we have the trial, February 2025 or later, it will be
12 three years. The parties will have spent a lot of money on
13 defending the case and prosecuting the case.

14 And, yes, it's going to be new claims raised now on
15 both sides now, so all of that should be a factor. And as
16 we go forward, every time there is something that happens
17 in the case or even if it doesn't happen, that's the
18 opportunity for the parties to be talking about how we get
19 this matter resolved. And I encourage you all to continue
20 to do that. I'm not suggesting that you have not done it.
21 Nobody can make anyone settle a case. I just encourage you
22 all to continue to try.

23 Is there anything else we need to take up at this
24 moment?

25 MR. WALLACE: I don't think so from our side, Your

1 Honor.

2 MR. NEWMAN: Not from Honor Society, Your Honor.

3 THE COURT: Okay. Thank you, Counsel and parties,
4 for making yourselves available on this expedited basis. I
5 appreciate you. This concludes all that the Court has
6 before it today. This matter -- do you need this back,
7 Mr. Wallace?

8 MR. WALLACE: You can keep it, Judge. We've got
9 copies.

10 THE COURT: Okay. All right. The Court is now
11 adjourned. Thank you so much.

12 MS. SUMMERS: All rise.

13 *****

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CERTIFICATE OF COURT REPORTER

I, Candice S. Crane, Official Court Reporter for the United States District Court for the Southern District of Mississippi, do hereby certify that the above and foregoing pages contain a full, true, and correct transcript of the proceedings had in the forenamed case at the time and place indicated, which proceedings were stenographically recorded by me to the best of my skill and ability.

I further certify that the transcript fees and format comply with those prescribed by the Court and Judicial Conference of the United States.

THIS, the 2nd day of April, 2024.

/s/ Candice S. Crane, RPR, RCR, CCR

Candice S. Crane, RPR, RCR, CCR #1781
Official Court Reporter
United States District Court
Candice_Crane@mssd.uscourts.gov

EXHIBIT A-3

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION

PHI THETA KAPPA HONOR SOCIETY,)

)

Plaintiff/Counter-Defendant,)

)

vs

) No. 3:22-cv-00208-

)

CWR-RPM

HONORSOCIETY.ORG, INC.,)

)

CONFIDENTIAL

Defendant/Counter-Plaintiff)

/Third-Party-Plaintiff)

)

HONOR SOCIETY FOUNDATION,)

INC.,)

)

Defendant)

)

AND RELATED ACTIONS.)

)

VIDEOTAPED DEPOSITION TRANSCRIPT
OF MICHAEL MORADIAN
Sherman Oaks, California
Friday, May 3, 2024
Volume III

Reported by:

LYNN GEARHART, RPR

CSR No. 9466

JOB No. 6679300

PAGES 1 - 297

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION

PHI THETA KAPPA HONOR SOCIETY,)
)
Plaintiff/Counter-Defendant,)
)
v.) No. 3:22-cv-00208-
) CWR-RPM
HONORSOCIETY.ORG, INC.,)
) CONFIDENTIAL
Defendant/Counter-Plaintiff)
/Third-Party-Plaintiff)
)
HONOR SOCIETY FOUNDATION,)
INC.,)
)
Defendant)
)

HONORSOCIETY.ORG, INC.,)
)
Defendant/Counter-Plaintiff)
/Third-Party-Plaintiff)
)
v.)
)
DR. LYNN TINCHER-LADNER,)
)
Third-Party Defendant.)
_____)

Videotaped Deposition Transcript of MICHAEL
MORADIAN, Volume III, taken on behalf of Plaintiff/
Counter-Defendant, at 15260 Ventura Boulevard, 21st
Floor, Sherman Oaks, California, beginning at 9:21
a.m. and ending at 6:14 p.m. on Friday, May 3, 2024,
before LYNN GEARHART, Certified Shorthand Reporter
No. 9466.

1 Q Has your organization used public records
2 requests in the past?

3 A I would say yes.

4 Q Why would an organization like yours use
5 public records requests?

6 MR. LINKE: Objection. Vague, calls for
7 speculation.

8 BY MR. POLAK:

9 Q You can answer.

10 A There are many reasons to do public records
11 requests.

12 Q What are those reasons?

13 A Well --

14 Q It would be good if you just list them out
15 for me, and I can ask you questions about each one.

16 A I will do my best. Freedom of Information
17 Act requests can be used for transparency, for
18 intelligence, for competitive intelligence, for
19 business strategy, for identifying people, for
20 directory information and many other reasons which I
21 can't think of sitting here right now.

22 Q Are all of those the reasons why Honor
23 Society has at one point or another issued public
24 records requests?

25 MR. LINKE: Objection. Overbroad.

1 THE WITNESS: What do you mean by all of
2 those?

3 BY MR. POLAK:

4 Q The ones you just listed.

5 A Would you mind rereading them to me?

6 Q Transparency, intelligence, competitive
7 intelligence, business strategy, identifying people,
8 directory information.

9 A Thank you. Now, would you mind repeating the
10 question?

11 Q Are all of those reasons why it is that Honor
12 Society from time to time has issued public records
13 requests?

14 A I believe to some extent, yes.

15 Q Do you know what type of -- well, you were
16 here with Mr. Asari. I'll just kind of cut to it.
17 You were here with Mr. Asari, and he was deposed
18 yesterday, and I showed him the public records
19 request examples that had been sent historically
20 since 2019. And you've got them there in front of
21 you if you want to take a look at them. These would
22 be Exhibits 250 through 255.

23 MR. LINKE: Mr. Polak, are you referring to
24 the stack of papers --

25 MR. POLAK: Correct.

1 MR. LINKE: -- on the right of the table?

2 MR. POLAK: Correct.

3 Q And you should feel free to look at those, if
4 you would like, but let me just set the table while
5 you're looking at them.

6 MR. LINKE: Mr. Polak, do you know if that
7 stack was just left here overnight tonight?

8 MR. POLAK: It was.

9 Q But if you want to pull 250 to 255. But my
10 point to you is that Mr. Asari said that the only
11 public records requests that were sent from 2019
12 prior to March of 2024 were basically these
13 directory requests that are shown in those
14 documents. Do you have any reason to believe that
15 other types of records requests were done in that
16 time period than just the directory requests?

17 If you hand those to me, I can pull them out.
18 I've given you 250 to 255. Those are the documents
19 that Mr. Asari yesterday identified as so-called
20 directory public records requests. My question to
21 you is whether you recall during that 2019 to 20 --
22 early -- well, to pre-March, 2024 period, whether
23 any other types of public records requests were made
24 by your organization.

25 MR. LINKE: Objection. Lacks foundation.

1 THE WITNESS: Thank you.

2 Can you repeat the question?

3 BY MR. POLAK:

4 Q Those look to you to be those so-called
5 directory requests you identified, asking for
6 directory information?

7 MR. LINKE: Objection. Misstates the
8 witness's prior testimony, assumes facts not in
9 evidence.

10 BY MR. POLAK:

11 Q Mr. Asari told us that those are directory
12 requests, Mr. Moradian. Do those look like the
13 directory requests that you referred to when you
14 listed out the various different reasons why Honor
15 Society had done records requests in the past?

16 Okay. You identified a number of different
17 reasons. One of those was directory information.
18 Are those directory requests? I'd note for you in
19 the first paragraph it has all in capitals letters
20 the word directory. Maybe that'll help you answer
21 my question a little more quickly.

22 A Based on your statement and based on my
23 review of this document to the best of my ability, I
24 would assume that these are directory requests.

25 Q Okay. So were any other types of requests

1 for public records sent by your company in 2019,
2 2020, 2021, 2022, 2023 or January, February of 2024,
3 than these directory requests?

4 MR. LINKE: Objection. Vague, overbroad,
5 compound.

6 THE WITNESS: I'm not sure what you're
7 referring to.

8 BY MR. POLAK:

9 Q You listed out for me several other ones,
10 Mr. Moradian. You said that you -- asking for
11 transparency, asking for intelligence, asking for
12 competitive intelligence, asking for business
13 strategy information. Did you send any other types
14 of records requests that met those categories?

15 A Sitting here right now, I can't definitively
16 speak to all of the extensive possibilities of
17 records requests that may or may not have been sent.

18 Q You understand that you are under court order
19 from Judge Meyers to produce to us every single type
20 of public records request that was sent by you in
21 the past. You understand that; right?

22 A I believe so.

23 Q So telling me that you don't know is not an
24 answer. I need to know definitively. You're the
25 president of this organization, and your company was

1 under court order to produce these to us. I need to
2 know whether there were any other public records
3 requests issued by you than just these types of
4 directory requests during the time period I
5 referenced, 2019 to the first two months of 2024.

6 A To the best --

7 MR. LINKE: Go ahead.

8 BY MR. POLAK:

9 Q Not to the best of my knowledge. Yes or no?

10 A To the best of my knowledge, sitting here
11 today right now, I believe a month removed from such
12 a request, I believe we did produce everything
13 responsive to that request.

14 Q But what would cause you to think that that
15 might not be an unqualified yes?

16 MR. LINKE: Are you asking about the exhibits
17 or about the court order?

18 MR. POLAK: He knows what I'm talking about.

19 Q Mr. Moradian. You're saying -- you're
20 qualifying your answer, to the best of my knowledge.
21 That's not what I'm asking you. You're under a
22 court order to state definitively whether all of
23 those records requests were gathered and produced to
24 me. I need to know definitively. Are these the
25 only requests that were used by your organization,

1 these so-called directory requests, or was there
2 something else?

3 A The reason the term to the best of my
4 knowledge was used and is used is because that
5 happened a month ago, and we took all the steps to
6 do that a month ago. But I'm sitting here as an
7 individual today to give you the best of my
8 knowledge.

9 Q Did you not put in a declaration, submitted
10 to the court, that you've been doing these public
11 records requests since the beginning of your
12 company?

13 A Again, to the best of my knowledge.

14 Q Did you qualify that declaration as to the
15 best of your knowledge, or did you state more
16 definitively what the answer was?

17 A To the best of my knowledge.

18 Q Okay. We'll take a look at your declaration.
19 We'll see if that, "to the best the your knowledge"
20 qualifier was in that statement that was sworn under
21 oath. But you can't sit here right now and tell me
22 definitively whether there were other public records
23 requests issued by your organization from 2019 to
24 the first two months of 2024.

25 MR. LINKE: Are you asking about these

1 exhibits in front of him? These files.

2 MR. POLAK: No, Derek. I'm not asking you
3 these questions. I'm asking Mr. Moradian, and he
4 knows what I'm talking about.

5 Q This is -- these -- these examples, 250 to
6 255, are so-called directory requests. I'm asking
7 you whether definitively, as a matter of yes or no,
8 do you -- did your organization send out any other
9 types of public record requests during that time
10 period than these directory requests?

11 A I'm sorry. Maybe in a more calm and
12 objective tone, do you think you could just --

13 Q Could you just answer my question,
14 Mr. Moradian? That's what I would like.

15 A I mean you're yelling at me.

16 Q I'm not yelling at you.

17 A It's makes it really hard to concentrate.

18 Q It would make it very nice if you would just
19 answer my question.

20 A I'm doing my best, and I would like to help
21 you.

22 Q Well, please answer my question 'cause I've
23 asked it now, I think, six times. I need a
24 definitive yes or no. Did your company send any
25 other types of public records requests from 2019 to

1 the first two months of 2024 than these
2 directory-type requests that you see in 250 through
3 256? I'm sorry, 255.

4 A To the best of my knowledge, everything
5 responsive was produced.

6 Q So you can't state definitively one way or
7 the other. You have to qualify it with this to the
8 best of your knowledge.

9 A Again, you're sitting here yelling at me --

10 Q Not yelling.

11 A -- in a raised tone, forcefully asking me to
12 testify of something that I already have. And I'm
13 not in a position to, just sitting here as an
14 individual, comment past what I've already provided.

15 Q All right. What is -- well, historically,
16 what has been your role with regard to public
17 records requests made by your organization?

18 MR. LINKE: Objection. Vague.

19 THE WITNESS: Can you be a little more
20 specific?

21 BY MR. POLAK:

22 Q No, I can't. It's a very simple question,
23 and I'd ask a very simple answer. What has been
24 your role historically in connection with public
25 records requests by your organization?

1 MR. LINKE: Objection. Vague.

2 THE WITNESS: I think about them and
3 strategize about them.

4 BY MR. POLAK:

5 Q Do you review them before they go out?

6 MR. LINKE: Objection. Overbroad.

7 THE WITNESS: Not usually.

8 BY MR. POLAK:

9 Q Do you communicate with people internally
10 about them?

11 MR. LINKE: Objection. Overbroad.

12 THE WITNESS: I've been involved with public
13 records and Freedom of Information for at least 17
14 years. So it's not something that we commonly talk
15 about at this point.

16 BY MR. POLAK:

17 Q Have you personally issued public records
18 requests on behalf of Honor Society?

19 A I'm not sure.

20 Q Who all at Honor Society are you aware of
21 that has issued public records requests in the past,
22 for Honor Society?

23 A Can you repeat that?

24 MR. POLAK: Could you read it back, please.

25 (Record read.)

1 THE WITNESS: I believe that would be David
2 Asari.

3 BY MR. POLAK:

4 Q Anybody else?

5 A And I believe to some extent I have.

6 Q What records -- types of records requests
7 have you issued in the past? And let me be clear
8 for you. We identified 250 through 255 as a
9 directory type of request. Have you issued
10 directory type requests for Honor Society in the
11 past?

12 MR. LINKE: Objection. Ambiguous, misstates
13 the witness's prior testimony, assumes facts not in
14 evidence.

15 THE WITNESS: Can you repeat that?

16 BY MR. POLAK:

17 Q 250 through 255 we identified as a
18 directory-type of records request.

19 A Uh-huh.

20 Q Is that the type of -- is that a type of
21 records request that you personally have issued in
22 the past for Honor Society?

23 MR. LINKE: Objection. Assumes facts not in
24 evidence.

25 THE WITNESS: I'm not sure.

1 BY MR. POLAK:

2 Q You referenced before that Mr. Asari has sent
3 records requests and that you have. What types of
4 records request do you recall issuing in the past?

5 MR. LINKE: Objection. Assume facts not in
6 evidence, ambiguous.

7 THE WITNESS: Well, our organization has been
8 doing records requests from inception, and I don't
9 remember what records requests I've done in the
10 history. You know, I'm the CEO, executive director
11 of this organization, and this is not really at the
12 top of my mind, Freedom of Information requests.
13 It's not something today.

14 BY MR. POLAK:

15 Q Well, it was at the top of Judge Meyers's
16 mind when he ordered you guys to produce them to us.
17 I will tell you I haven't seen any records requests
18 produced by your company that were issued by you.

19 So you're telling me here today that you have
20 issued them in the past, and so I'm concerned. And
21 I would like to know what you remember about sending
22 those requests. What was the subject matter? When
23 did you do it?

24 MR. LINKE: Objection. Misstates the
25 witness's prior testimony.

1 THE WITNESS: I'm happy you're concerned
2 because I also share some concerns. And I think
3 that it's important -- maybe you can remind me.
4 What was the date of the -- cutoff dates for this
5 request?

6 BY MR. POLAK:

7 Q This is not this time for us to have that
8 dialogue, Mr. Moradian. I'm simply asking you --
9 you apparently remembered issuing some public
10 records requests in the past that Mr. Asari did not
11 issue. And I'm asking you, what are you thinking of
12 when that answer was given? What was the subject
13 matter? When was it made?

14 A Can you repeat that --

15 Q No.

16 A -- more succinctly?

17 Q You've heard me. I've now asked you this
18 three times. What were the public records requests
19 subject matters that were involved in the emails
20 that you sent and when were they sent?

21 MR. LINKE: Mr. Polak, as of yesterday, I
22 would ask that you not yell at the witness --

23 MR. POLAK: Not yelling.

24 MR. LINKE: -- throughout the day yesterday.
25 You've already been asked by the witness today not

1 to do it, and he mentioned it made it hard for him
2 to answer the questions. We can have a civil
3 deposition without you raising your voice when
4 you're trying to force him to give you answers under
5 pressure. There's no need for it.

6 MR. POLAK: Not -- first of all, not yelling;
7 second of all, not raising my voice either.

8 Q But I am being direct with you, Mr. Moradian,
9 because you are not answering my questions. And I
10 think you are intentionally being evasive about
11 answering my questions, just like Mr. Asari was
12 intentionally evasive about answering my questions
13 yesterday.

14 So I'm going to ask you this one more time,
15 and this is your chance to answer the question. I
16 would like you to describe for me the subject matter
17 of the public records requests that you were
18 thinking of when you answered my question a few
19 short moments ago that you thought you had sent
20 public records requests in the past. What was the
21 subject matter?

22 A Firstly, I am trying my best to answer every
23 question as quickly and succinctly as possible. I
24 think you're intentionally yelling at me and
25 intentionally putting pressure on me. So I again,

1 I'm trying my best here, and I would please ask that
2 you respect this civil dialogue.

3 Q Would you just answer my question,
4 Mr. Moradian?

5 A I'm sorry. Can you quickly just --

6 Q No. You know what I asked you for. I'm not
7 going to ask it again. Tell me what the subject
8 matter was of these emails of the public records
9 requests that you think you sent in the past. I
10 think this is the eighth time I've asked you this
11 question.

12 A I think I sent a number of them around the
13 foundational time of Honor Society to understand
14 what's possible and the directory information around
15 inception time.

16 Q So they were directory-type requests. Do you
17 recall any other types of subject matter that you
18 sent public records requests for Honor Society?

19 A I'm not sure.

20 Q You said that you think about public records
21 requests. What do you mean by that? As a part of
22 your role in connection with the public records
23 requests issued by Honor Society, you said that you
24 think about them. What do you mean by that?

25 A Sure. So public institutions, such as the

1 institutions that many honor societies work with,
2 that Dr. Tincher-Ladner emails and corresponds with,
3 in fact in her case they're almost exclusively
4 public institutions. And, you know, as
5 Dr. Tincher-Ladner refers to them as sunshine --
6 sunshine laws, they are exactly that. They are
7 meant to bring sunshine or illuminate to the public
8 discrepancies, issues, violations. And Freedom of
9 Information Act has been used accordingly many
10 times, from Sandusky and researching Sandusky's
11 actions at Penn State University, Larry Nassar --

12 Q Do you ask for -- do you ask for this stuff
13 for Honor Society business? 'Cause none of that is
14 responsive to my question. I'm just asking you what
15 you think about in your role in connection with your
16 role with the Honor Society.

17 MR. LINKE: Mr. Moradian, were you finished
18 with your answer before he interrupted you?

19 THE WITNESS: No, I wasn't.

20 BY MR. POLAK:

21 Q Okay. You keep -- you keep wasting my time
22 --

23 A No, I'm not --

24 Q -- with information that I did not ask for.
25 But if you want to keep taking up time on this

1 record, telling me about Larry Nassar and the swim
2 team, you go right ahead. But that's not at all
3 what I asked about.

4 A Can you please repeat what you asked?
5 Ms. Reporter?

6 MR. LINKE: Mr. Polak, the rule provides that
7 your remedy is to object as nonresponsive at the
8 conclusion of the answer.

9 MR. POLAK: Okay. So you're endorsing him
10 wasting our time today, Derek.

11 MR. LINKE: I'm addressing your conduct
12 during deposition, which is an ongoing problem we've
13 had through many --

14 MR. POLAK: There's a problem with the
15 conduct in the deposition, Derek. There's no
16 question about that, but it's not on me.

17 THE WITNESS: Can I finish my response?

18 MR. POLAK: No. I'll withdraw the question.
19 I'm tired of hearing it.

20 THE WITNESS: No, I'm -- I need to --

21 MR. POLAK: No. I withdraw the question, and
22 I'll strike your answer.

23 Q With respect to strategizing about these at
24 Honor Society, that was also a role that you said
25 that you had. Why don't you tell me how -- who it

1 Q Did you read Judge Reeves's preliminary
2 injunction order concerning the survey?

3 A I believe -- I believe so.

4 Q Do you -- do you recall that Judge Reeves
5 called this survey malicious?

6 A I'm not sure.

7 Q You're not sure? You don't recall. That's a
8 pretty big word and a pretty important word where a
9 federal judge calls this survey malicious, and you
10 don't recall that?

11 A I recall reading the statement.

12 Q Okay. So you recall reading the statement in
13 the injunction where he called it malicious. Do you
14 agree with Judge Reeves that this survey was
15 maliciously intended?

16 MR. LINKE: Objection. Misstates the
17 witness's prior testimony.

18 THE WITNESS: While I admire Judge Reeves and
19 I view him as venerable and respect him, I believe
20 that, you know, in that TRO hearing he was very
21 misinformed, and I don't think that he has had the
22 chance to have a truly objective analysis.

23 So, you know, to that extent -- and you're
24 asking -- you're asking me. I mean to that extent,
25 I think that I don't think he had a fair chance to

1 I, the undersigned, a Certified Shorthand
2 Reporter of the State of California, do hereby
3 certify:

4 That the foregoing proceedings were taken
5 before me at the time and place herein set forth;
6 that any witnesses in the foregoing proceedings,
7 prior to testifying, were placed under oath; that a
8 verbatim record of the proceedings was made by me
9 using machine shorthand which was thereafter
10 transcribed under my direction; further, that the
11 foregoing is an accurate transcription thereof.

12 Further, that if the foregoing pertains to
13 the original transcript of a deposition in a Federal
14 Case, before completion of the proceedings, review
15 of the transcript [] was [] was not requested.

16 I further certify that I am neither
17 financially interested in the action nor a relative
18 or employee of any attorney or any of the parties.

19 IN WITNESS WHEREOF, I have this date
20 subscribed my name.

21
22 Dated: May 3, 2024

23
24 

LYNN GEARHART, RPR

CSR No. 9466

EXHIBIT A-4

Date	Name	Description	Orig Hrs	Orig Amt	Orig Rate	Rev Hrs	Rev Amt	Invoice	Status	Narrative
05/09/2024	Polak, Jonathan G.	Partner	1.10	907.50	825.00	1.10	907.50	6349699	Billed	Attention to social media posts by Honor Society concerning counterclaims; evaluate strategy on same; conference with Lynn Tincher-Ladner regarding same; prepare email to counsel on same.
05/09/2024	Smoot, Rachel A.	Associate	1.50	705.00	470.00	1.50	705.00	6349699	Billed	Call with client regarding false advertising issues.
05/09/2024	Smoot, Rachel A.	Associate	0.70	329.00	470.00	0.70	329.00	6349699	Billed	Call with co-counsel regarding latest social media posts and press release by Defendants.
05/10/2024	Smoot, Rachel A.	Associate	0.30	141.00	470.00	0.30	141.00	6349699	Billed	Call with co-counsel regarding latest developments as it relates to false advertising claim.
05/13/2024	Smoot, Rachel A.	Associate	0.40	188.00	470.00	0.40	188.00	6349699	Billed	Call with client regarding latest social media posts by Defendants.
05/14/2024	Polak, Jonathan G.	Partner	0.50	412.50	825.00	0.50	412.50	6349699	Billed	Conference with Dr. Tincher-Ladner regarding status of case and recent public communications by HS.org; review and exchange emails regarding same with client.
05/19/2024	Polak, Jonathan G.	Partner	0.50	412.50	825.00	0.50	412.50	6349699	Billed	Review issues related to mailing of press release; consider legal strategy on same; exchange emails with client and Rachel Smoot regarding same.
06/06/2024	Polak, Jonathan G.	Partner	0.30	247.50	825.00	0.30	247.50	6376040	Billed	Review emails from client regarding recent records requests made by Honor Society; review preliminary injunction to determine compliance; respond to emails from client.
06/06/2024	Polak, Jonathan G.	Partner	0.30	247.50	825.00	0.30	247.50	6376040	Billed	Review emails from client regarding recent advertisements and solicitations by Honor Society; evaluate strategy on same; respond to emails from client.
06/10/2024	Smoot, Rachel A.	Associate	0.40	188.00	470.00	0.40	188.00	6376040	Billed	Review and analyze latest posts and press releases by Honor Society; confer with co-counsel regarding same.
06/11/2024	Polak, Jonathan G.	Partner	0.30	247.50	825.00	0.30	247.50	6376040	Billed	Review recent records requests brought to attention of client by community colleges; review injunction order; prepare email to client with evaluation of same.
06/12/2024	Polak, Jonathan G.	Partner	1.80	1,485.00	825.00	1.80	1,485.00	6376040	Billed	Review recent social media posts by Honor Society; consider strategies for addressing same, including injunctive relief; conference with C. Cowan regarding same; conference with Rachel Smoot regarding same; conference with Mike Etienne regarding same; conference with Lynn Tincher-Ladner regarding same
06/12/2024	Etienne, William M.	Associate	3.90	1,813.50	465.00	3.90	1,813.50	6376040	Billed	Research case law regarding PTK motion to cause HS to cease publications characterizing the lawsuit.
06/12/2024	Etienne, William M.	Associate	1.90	883.50	465.00	1.90	883.50	6376040	Billed	Prepare outline including case law on Motion for Gag Order.
06/12/2024	Etienne, William M.	Associate	2.40	1,116.00	465.00	2.40	1,116.00	6376040	Billed	Continue to outline Memo in support of Motion for Gag Order; prepare Introduction and portion of Statement of Facts.
06/12/2024	Kendall, Kristina	Paralegal	0.10	43.50	435.00	0.00	0.00	6376040	Billed	Perform PageVault capture for Rachel Smoot.
06/12/2024	Sears, Hayley A.	Associate	1.20	450.00	375.00	1.20	450.00	6376040	Billed	Discuss with preliminary injunction and gag order with Mike Etienne and partake in call on document review.
06/12/2024	Smoot, Rachel A.	Associate	1.00	470.00	470.00	1.00	470.00	6376040	Billed	Confer with co-counsel regarding preparation of Motion for Gag Order; review and analyze case law regarding same.
06/13/2024	Matthews, Alex M.	Associate	8.70	3,262.50	375.00	8.70	3,262.50	6376040	Billed	Drafting and revising motion for preliminary injunction regarding Honor Society press releases and social media posts; reviewing and analyzing Honor Society publicly released materials; reviewing and analyzing motion for PI briefing and ruling
06/13/2024	Polak, Jonathan G.	Partner	3.20	2,640.00	825.00	3.20	2,640.00	6376040	Billed	Continue work on preliminary injunction/gag order strategy and related papers; conference with Mike Etienne regarding same; review cases and other relevant authorities for same; review file materials for same; review and exchange communications with client regarding same.
06/13/2024	Etienne, William M.	Associate	8.20	3,813.00	465.00	8.20	3,813.00	6376040	Billed	Continue to prepare Memo in Support of Motion for Gag Order.
06/13/2024	Sears, Hayley A.	Associate	5.20	1,950.00	375.00	5.20	1,950.00	6376040	Billed	Review exhibits containing twitter accounts, articles, independent sources, and HS website and draft statement of facts.
06/13/2024	Smoot, Rachel A.	Associate	0.70	329.00	470.00	0.70	329.00	6376040	Billed	Confer with co-counsel regarding additional evidence in support of emergency motion to stop Defendants' publications.
06/14/2024	Matthews, Alex M.	Associate	9.30	3,487.50	375.00	9.30	3,487.50	6376040	Billed	Drafting and revising motion for PI regarding HS' website & social media postings; reviewing and analyzing docket, exhibits, and transcripts for same; internal team conference regarding same
06/14/2024	Polak, Jonathan G.	Partner	0.90	742.50	825.00	0.90	742.50	6376040	Billed	Continue work on TRO papers and strategy; conference with Mike Etienne regarding same.
06/14/2024	Etienne, William M.	Associate	8.40	3,906.00	465.00	8.40	3,906.00	6376040	Billed	Continue to prepare Memorandum in support of Gag Order and Preliminary Injunction based on Defendants misleading publications.
06/14/2024	Sears, Hayley A.	Associate	5.30	1,987.50	375.00	5.30	1,987.50	6376040	Billed	Read draft motion for preliminary injunction and gag order, draft Jonathan Polak declaration, review new exhibits, and research case law on gag order.
06/14/2024	Sears, Hayley A.	Associate	0.30	112.50	375.00	0.30	112.50	6376040	Billed	Call with Mike Etienne to get update on next steps for briefing.
06/15/2024	Sears, Hayley A.	Associate	4.00	1,500.00	375.00	4.00	1,500.00	6376040	Billed	Review new twitter accounts, Facebook posts, and instagram posts and send to Mike and draft Lynn's declaration.
06/15/2024	Sears, Hayley A.	Associate	0.80	300.00	375.00	0.80	300.00	6376040	Billed	Edit statement of facts to incorporate new information and caricatures of Lynn.
06/16/2024	Polak, Jonathan G.	Partner	0.30	247.50	825.00	0.30	247.50	6376040	Billed	Review emails from client on social media postings by Honor Society; prepare email to Mike Etienne regarding inclusion of same in moving papers.
06/16/2024	Etienne, William M.	Associate	0.40	186.00	465.00	0.40	186.00	6376040	Billed	Discuss Statement of Facts and Declaration in support of Motion for Preliminary Injunction and Gag Order.
06/17/2024	Matthews, Alex M.	Associate	13.20	4,950.00	375.00	13.20	4,950.00	6376040	Billed	Editing and revising motion for PI & gag order; reviewing and analyzing HS discovery requests and associated pleadings; reviewing and coding documents for production
06/17/2024	Polak, Jonathan G.	Partner	1.80	1,485.00	825.00	1.80	1,485.00	6376040	Billed	Continue work on memo and related papers in support of Motion for Preliminary Injunction; internal conferences regarding same; exchange emails with local counsel regarding same.
06/17/2024	Etienne, William M.	Associate	4.70	2,185.50	465.00	4.70	2,185.50	6376040	Billed	Revise Statement of Facts for Motion for Preliminary Injunction and Gag Order.
06/17/2024	Etienne, William M.	Associate	5.20	2,418.00	465.00	5.20	2,418.00	6376040	Billed	Prepare additional portions of Gag Order Argument for brief in support of same; provide comments regarding Tortious Interference claims for same.
06/17/2024	Smoot, Rachel A.	Associate	6.30	2,961.00	470.00	6.30	2,961.00	6376040	Billed	Revise and edit Memorandum in Support of Motion for Preliminary Injunction and Gag Order and documents in support of same; review and analyze latest public statements by Defendant for the purpose of including into Memorandum.
06/17/2024	Sears, Hayley A.	Associate	0.20	75.00	375.00	0.20	75.00	6376040	Billed	Check in with Mike Etienne about preliminary injunction statement of facts and document review.
06/18/2024	Etienne, William M.	Associate	0.50	232.50	465.00	0.50	232.50	6376040	Billed	Review additional publications by Defendants in last two days and review HS and HS Foundation Twitter and Instagram accounts in connection with preparation of additional exhibits.
06/18/2024	Etienne, William M.	Associate	6.20	2,883.00	465.00	6.20	2,883.00	6376040	Billed	Discuss comments and revise brief in support of motion for gag order and preliminary injunction in view of comments and new offending conduct.
06/18/2024	Smoot, Rachel A.	Associate	2.10	987.00	470.00	2.10	987.00	6376040	Billed	Revise and edit Memorandum in Support of Motion for Preliminary Injunction and Gag Order; revise and edit Lynn Tincher-Ladner Declaration in support of same.
06/18/2024	Sears, Hayley A.	Associate	2.20	825.00	375.00	2.20	825.00	6376040	Billed	Research case law on witness intimidation for gag order brief, look for new material on twitter, facebook, linkedin, and instagram, and communicate with mike about next steps to finalize brief and declarations.
06/19/2024	Etienne, William M.	Associate	4.70	2,185.50	465.00	4.70	2,185.50	6376040	Billed	Review examples of Defendants' 1,244 AI-generated college-specific articles; incorporate facts regarding same in preliminary injunction and gag order facts.
06/19/2024	Etienne, William M.	Associate	2.40	1,116.00	465.00	2.40	1,116.00	6376040	Billed	Prepare Motion for Preliminary Injunction and Gag Order including Prayer for Relief and request for attorneys' fees; identify case law in support of same.

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06/19/2024	Etienne, William M.	Associate	0.40	186.00	465.00	0.40	186.00 6376040	Billed	Review correspondence and provide suggested edits to same regarding Defendants' alleged motion to compel discovery.
06/19/2024	Etienne, William M.	Associate	0.60	279.00	465.00	0.60	279.00 6376040	Billed	Revise introduction of preliminary injunction briefing based on discovery of AI-generated articles.
06/19/2024	Smoot, Rachel A.	Associate	6.40	3,008.00	470.00	6.40	3,008.00 6376040	Billed	Revise and edit Memorandum in Support of Motion for TRO/PI/Gag Order and supporting documents; confer with co-counsel regarding same.
06/19/2024	Sears, Hayley A.	Associate	3.00	1,125.00	375.00	3.00	1,125.00 6376040	Billed	Research case law about tortious interference preliminary injunction where social media was enjoined
06/19/2024	Polak, Jonathan G.	Partner	3.40	2,805.00	825.00	3.40	2,805.00 6376040	Billed	Continue work on motion to TRO and related papers; exchange emails with local counsel regarding same; exchange emails with client regarding same; review new evidence.
06/19/2024	Polak, Jonathan G.	Partner	0.80	660.00	825.00	0.80	660.00 6376040	Billed	Conference with Lynn Tincher-Ladner regarding status of TRO papers and other recent activities related to social media postings by Honor Society.
06/19/2024	Peluchette, Neil R.	Associate	8.20	3,444.00	420.00	8.20	3,444.00 6376040	Billed	PageVault website captures of hundreds of articles on Honor Society's website.
06/20/2024	Nienhouse, Hillary	Clerk	4.50	1,170.00	260.00	4.50	1,170.00 6376040	Billed	Meet with Neil Peluchette; Take Page Vault captures of web articles about client Phi Theta Kappa
06/20/2024	Polak, Jonathan G.	Partner	0.50	412.50	825.00	0.50	412.50 6376040	Billed	Conference with local counsel on strategy for TRO.
06/20/2024	Polak, Jonathan G.	Partner	1.80	1,485.00	825.00	1.80	1,485.00 6376040	Billed	Continue work on TRO and related paperwork and strategy.
06/20/2024	Etienne, William M.	Associate	1.80	837.00	465.00	1.80	837.00 6376040	Billed	Prepare slides for hearing on preliminary injunction and board presentation demonstrating HS's wrongful publications.
06/20/2024	Etienne, William M.	Associate	0.90	418.50	465.00	0.90	418.50 6376040	Billed	Review additional AI-generated articles created by HS to disparage PTK, which now total nearly 5,000.
06/20/2024	Etienne, William M.	Associate	0.50	232.50	465.00	0.50	232.50 6376040	Billed	Meet with local counsel to discuss strategy for preliminary injunction and gag order briefing.
06/20/2024	Peluchette, Neil R.	Associate	8.90	3,738.00	420.00	8.90	3,738.00 6376040	Billed	PageVault website captures of hundreds of articles on Honor Society's website.
06/21/2024	Etienne, William M.	Associate	0.70	325.50	465.00	0.70	325.50 6376040	Billed	Attend meeting with PTK board regarding HS's malicious conduct.
06/21/2024	Peluchette, Neil R.	Associate	3.80	1,596.00	420.00	3.80	1,596.00 6376040	Billed	PageVault website captures of hundreds of articles on Honor Society's website; correspondence with PageVault regarding the mass capture of the Honor Society's website; call with PageVault regarding same; collection of prior captured content for production.
06/24/2024	Polak, Jonathan G.	Partner	0.50	412.50	825.00	0.50	412.50 6376040	Billed	Review newly published social media websites; consider issues related to motion for TRO; exchange communications with client regarding same.
06/24/2024	Peluchette, Neil R.	Associate	1.20	504.00	420.00	1.20	504.00 6376040	Billed	Receipt of PageVault downloads from PageVault; collection of same and providing to litigation support for processing and production.
06/24/2024	Peluchette, Neil R.	Associate	0.70	294.00	420.00	0.70	294.00 6376040	Billed	PageVault capture of two newly published articles.
06/24/2024	Smoot, Rachel A.	Associate	0.80	376.00	470.00	0.80	376.00 6376040	Billed	Confer with co-counsel regarding Motion for Temporary Restraining Order and additional evidence in support of same.
06/25/2024	Etienne, William M.	Associate	1.50	697.50	465.00	1.50	697.50 6376040	Billed	Review new Honor Society publications disparaging PTK; print and prepare publications and related correspondence as demonstratives for discovery hearing.
06/25/2024	Sears, Hayley A.	Associate	3.00	1,125.00	375.00	3.00	1,125.00 6376040	Billed	Search for new articles, tweets, and news sources; compare new ones to original documents; and converse with Mike Etienne about next steps.
06/26/2024	Polak, Jonathan G.	Partner	0.40	330.00	825.00	0.40	330.00 6376040	Billed	Review recent changes to social media sites; conference with Rachel Smoot regarding same.
06/26/2024	Peluchette, Neil R.	Associate	0.40	168.00	420.00	0.40	168.00 6376040	Billed	PageVault capture of newly published web article.
06/26/2024	Sears, Hayley A.	Associate	2.10	787.50	375.00	2.10	787.50 6376040	Billed	Search for additional articles and create exhibit table outlining all of the exhibits and their content.
06/27/2024	Etienne, William M.	Associate	0.80	372.00	465.00	0.80	372.00 6376040	Billed	Meet to discuss TRO briefing regarding Defendants' malicious publications, PTK's interrogatory responses, Defendants' protective order violations, and document productions.
06/27/2024	Etienne, William M.	Associate	12.80	5,952.00	465.00	12.80	5,952.00 6376040	Billed	Revise brief in support of Motion for TRO and Gag Order including sections on tortious interference, gag order, and introduction, conclusion, and statement of facts.
06/27/2024	Smoot, Rachel A.	Associate	1.60	752.00	470.00	1.60	752.00 6376040	Billed	Call with co-counsel regarding Motion for Temporary Restraining Order/ Gag Order.
06/28/2024	Etienne, William M.	Associate	3.20	1,488.00	465.00	3.20	1,488.00 6376040	Billed	Revise brief to include additional examples of injury to PTK; prepare demonstrative chart in furtherance of same.
06/28/2024	Smoot, Rachel A.	Associate	0.50	235.00	470.00	0.50	235.00 6376040	Billed	Confer with co-counsel regarding evidence for Motion for Temporary Restraining Order.
06/28/2024	Etienne, William M.	Associate	0.40	186.00	465.00	0.40	186.00 6376040	Billed	Revise Motion for PI based on newly discovered evidence; circulate same with comments in conjunction with brief to local counsel for further review.
06/28/2024	Smoot, Rachel A.	Associate	0.50	235.00	470.00	0.50	235.00 6376040	Billed	Review legal research related to unauthorized access of PTK information; confer with co-counsel regarding same.
06/29/2024	Smoot, Rachel A.	Associate	2.50	1,175.00	470.00	2.50	1,175.00 6376040	Billed	Revise and edit Tincher-Ladner Declaration in Support of Motion for Temporary Restraining Order/Gag Order.
06/30/2024	Polak, Jonathan G.	Partner	1.20	990.00	825.00	1.20	990.00 6376040	Billed	Continue work on TRO and injunction papers.
06/30/2024	Etienne, William M.	Associate	3.30	1,534.50	465.00	3.30	1,534.50 6376040	Billed	Revise brief to include proper exhibit citations; address further comments regarding same.
06/30/2024	Matthews, Alex M.	Associate	9.40	3,525.00	375.00	9.40	3,525.00 6376040	Billed	Editing and revising motion for PI; gathering exhibits and cited materials; editing and revising declarations; internal team conference regarding finalizing brief and exhibits
07/01/2024	Etienne, William M.	Associate	0.80	372.00	465.00	0.80	372.00 6402281	Billed	Revise motion for preliminary injunction based on comments regarding gag order.
07/01/2024	Matthews, Alex M.	Associate	8.20	3,075.00	375.00	8.20	3,075.00 6402281	Billed	Coordinate exhibits for LTL declaration and brief in support of motion for preliminary injunction; review citations in brief in furtherance of same.
07/01/2024	Etienne, William M.	Associate	0.80	372.00	465.00	0.80	372.00 6402281	Billed	Revising and editing brief for PI motion; drafting and revising Polak decl; reviewing and coding documents for production
07/01/2024	Smoot, Rachel A.	Associate	4.40	2,068.00	470.00	4.40	2,068.00 6402281	Billed	Revise and edit Memorandum in Support of Motion for Temporary Restraining Order and Gag Order; revise and edit Tincher-Ladner Declaration in Support of same; multiple calls and emails with co-counsel regarding same; messages with client regarding same.
07/01/2024	Polak, Jonathan G.	Partner	1.40	1,155.00	825.00	1.40	1,155.00 6402281	Billed	Continue work on TRO and related papers; internal communications regarding same.
07/02/2024	Matthews, Alex M.	Associate	7.70	2,887.50	375.00	7.70	2,887.50 6402281	Billed	Revising and editing exhibits for motion for PI; reviewing and coding documents for production
07/02/2024	Balthazor Jr., O J.	Associate	0.60	288.00	480.00	0.60	288.00 6402281	Billed	Review and analyze emails from Rachel Smoot and Mike Etienne regarding screenshots for motion; phone call with Rachel Smoot regarding the same; pull screenshots of Google search results pages for purposes of attaching to motion; email Rachel Smoot and Mike Etienne regarding the same.
07/02/2024	Smoot, Rachel A.	Associate	4.10	1,927.00	470.00	4.10	1,927.00 6402281	Billed	Revise and edit Memorandum in Support of Motion for Preliminary Injunction, Temporary Restraining Order and/or Gag Order; revise and edit Tincher-Ladner Declaration in Support of the same; revise and edit Polak Declaration in Support of the same; multiple emails and calls with client and co-counsel regarding same.
07/02/2024	Polak, Jonathan G.	Partner	2.70	2,227.50	825.00	2.70	2,227.50 6402281	Billed	Continue work on motion for TRO and related papers; internal conferences regarding same; exchange of emails with local counsel regarding same.
07/02/2024	Etienne, William M.	Associate	1.20	558.00	465.00	1.20	558.00 6402281	Billed	Revise PTK brief in support of TRO and Gag Order to align requested relief with that of Motion and to highlight PTK's need for right to a fair trial.

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07/02/2024	Etienne, William M.	Associate	0.80	372.00	465.00	0.80	372.00 6402281	Billed	Review Search Engine Optimization case law and revise PTK brief in support of TRO / GO to include discussion of same.
07/02/2024	Etienne, William M.	Associate	2.20	1,023.00	465.00	2.20	1,023.00 6402281	Billed	Revise PTK brief in support of TRO and Gag Order to include discussion of additional, quantified harm.
07/02/2024	Etienne, William M.	Associate	1.10	511.50	465.00	1.10	511.50 6402281	Billed	Revise PTK brief in support of TRO and Gag Order to include discussion of Defendants' conduct being far more than a protectable press-release .
07/02/2024	Etienne, William M.	Associate	0.80	372.00	465.00	0.80	372.00 6402281	Billed	Revise PTK brief in support of TRO and Gag Order to include updated exhibit reference; prepare additional material for exhibits in furtherance of same.
07/02/2024	Etienne, William M.	Associate	8.60	3,999.00	465.00	8.60	3,999.00 6402281	Billed	Revise all portions of PTK brief in support of TRO and Gag Order to reduce length and provide more persuasive requests for relief; revise Motion to achieve same.
07/03/2024	Smoot, Rachel A.	Associate	7.00	3,290.00	470.00	7.00	3,290.00 6402281	Billed	Revise and edit Memorandum in Support of Motion for Temporary Restraining Order, Preliminary Injunction, and/or Gag Order; revise and edit supporting documents in support of same; draft, revise, and edit Motion to Seal and Proposed Order granting same.
07/03/2024	Smoot, Rachel A.	Associate	0.30	141.00	470.00	0.30	141.00 6402281	Billed	Confer with local counsel regarding scheduled hearing; draft Notice of Hearing.
07/03/2024	Polak, Jonathan G.	Partner	4.30	3,547.50	825.00	4.30	3,547.50 6402281	Billed	Continue work on TRO and related papers; internal conferences regarding same.
07/03/2024	Etienne, William M.	Associate	9.60	4,464.00	465.00	9.60	4,464.00 6402281	Billed	Revise brief in support of motion for TRO/PI and GO based on comments from local counsel; revise same to include pin citations for exhibits A1-46; revision motion and declaration in view of same; coordinate filing of same.
07/04/2024	Smoot, Rachel A.	Associate	0.30	141.00	470.00	0.30	141.00 6402281	Billed	Attention to multiple emails from opposing counsel.
07/04/2024	Polak, Jonathan G.	Partner	0.20	165.00	825.00	0.20	165.00 6402281	Billed	Receive and review email from D. Linke regarding confidentiality designations under motion to seal; consider response to same; prepare response.
07/05/2024	Smoot, Rachel A.	Associate	0.20	94.00	470.00	0.20	94.00 6402281	Billed	Finalize and file Notice of Hearing.
07/05/2024	Smoot, Rachel A.	Associate	0.60	282.00	470.00	0.60	282.00 6402281	Billed	Attention to multiple emails from opposing counsel; confer with co-counsel regarding same; redact Tincher-Ladner Declaration and send same to opposing counsel.
07/05/2024	Polak, Jonathan G.	Partner	0.30	247.50	825.00	0.30	247.50 6402281	Billed	Prepare status email to Lynn Tincher-Ladner on pending motions and anticipated schedule for next week.
07/07/2024	Smoot, Rachel A.	Associate	0.30	141.00	470.00	0.30	141.00 6402281	Billed	Attention to Response in Opposition to Motion to Seal.
07/07/2024	Etienne, William M.	Associate	0.40	186.00	465.00	0.40	186.00 6402281	Billed	Review Defendants' Response to PTK's Motion to Seal.
07/08/2024	Polak, Jonathan G.	Partner	1.50	1,237.50	825.00	1.50	1,237.50 6402281	Billed	Prepare for court hearing; review file materials for same; attend court hearing; post-hearing conference with co-counsel to discuss status and strategy.
07/08/2024	Polak, Jonathan G.	Partner	0.80	660.00	825.00	0.80	660.00 6402281	Billed	Exchange emails with client regarding hearing status and strategy; conference with client regarding same.
07/08/2024	Polak, Jonathan G.	Partner	1.60	1,320.00	825.00	1.60	1,320.00 6402281	Billed	Begin preparation for hearing on July 12th; review file materials for same; identify exhibits to be used at hearing; begin work on exhibit list for same; conference with client to discuss hearing strategy.
07/08/2024	Etienne, William M.	Associate	1.30	604.50	465.00	1.30	604.50 6402281	Billed	Research and review case law regarding Reply in support of motion to seal in 5th Circuit.
07/08/2024	Etienne, William M.	Associate	1.80	837.00	465.00	1.80	837.00 6402281	Billed	Participate in scheduling hearing for TRO hearing and motion to seal.
07/08/2024	Etienne, William M.	Associate	1.10	511.50	465.00	1.10	511.50 6402281	Billed	Review and provide comments regarding initial draft of Reply to motion to seal; provide comments on additional case needs in support of same.
07/08/2024	Matthews, Alex M.	Associate	7.70	2,887.50	375.00	7.70	2,887.50 6402281	Billed	Reviewing and analyzing case law regarding motion to seal; drafting and revising reply to motion to seal
07/08/2024	Smoot, Rachel A.	Associate	2.00	940.00	470.00	2.00	940.00 6402281	Billed	Prepare for and attend status conference; coordinate delivery to Court of Motion for Temporary Restraining Order, Preliminary Injunction and/or Gag Order and supporting papers; coordinate drafting of Reply.
07/09/2024	Etienne, William M.	Associate	5.20	2,418.00	465.00	5.20	2,418.00 6402281	Billed	Prepare PTK reply brief in support of motion to seal; research case law in furtherance of same.
07/09/2024	Polak, Jonathan G.	Partner	8.50	7,012.50	825.00	8.50	7,012.50 6402281	Billed	Continue preparation for TRO and injunction hearing; review file materials for same; begin preparation of examination outline of Dr. Tincher-Ladner.
07/09/2024	Polak, Jonathan G.	Partner	0.90	742.50	825.00	0.90	742.50 6402281	Billed	Work on identifying exhibits for use at injunction hearing; work with administrative team on same.
07/10/2024	Polak, Jonathan G.	Partner	6.00	4,950.00	825.00	0.00	0.00 6402281	Billed	Travel to Jackson for injunction hearing.
07/10/2024	Polak, Jonathan G.	Partner	4.00	3,300.00	825.00	4.00	3,300.00 6402281	Billed	Continue work on preparation for injunction hearing; continue work on Lynn Tincher-Ladner direct examination; work on M. Moradian cross- examination.
07/10/2024	Polak, Jonathan G.	Partner	0.50	412.50	825.00	0.50	412.50 6402281	Billed	Continue work on reply to motion to seal; provide comments and revisions to Mike Etienne.
07/10/2024	Polak, Jonathan G.	Partner	0.80	660.00	825.00	0.80	660.00 6402281	Billed	Review response brief; consider reply brief arguments and strategy.
07/10/2024	Etienne, William M.	Associate	2.90	1,348.50	465.00	2.90	1,348.50 6402281	Billed	Revise Reply brief in support of motion to seal based on comments and additional case law and exhibit citations.
07/10/2024	Etienne, William M.	Associate	2.80	1,302.00	465.00	2.80	1,302.00 6402281	Billed	Review brief in opposition to PTK's motion for injunction relief; review case law and compose arguments to rebut same.
07/10/2024	Etienne, William M.	Associate	1.80	837.00	465.00	1.80	837.00 6402281	Billed	Review Defendants' Opposition to PTK's Motion seeking injunctive relief; research case law and provide notes regarding Rebuttal to same.
07/10/2024	Etienne, William M.	Associate	1.70	790.50	465.00	1.70	790.50 6402281	Billed	Review declarations of Marek, Linke, and Moradian; review exhibits in support of same to identify potential issues/objections.
07/10/2024	Matthews, Alex M.	Associate	9.80	3,675.00	375.00	9.80	3,675.00 6402281	Billed	Editing and revising motion to seal; reviewing and analyzing case law for same
07/10/2024	Smoot, Rachel A.	Associate	6.40	3,008.00	470.00	6.40	3,008.00 6402281	Billed	Review and analyze Response in Opposition to Motion for Temporary Restraining Order, Preliminary Injunction and/or Gag Order and supporting documents; confer with co-counsel regarding same; confer with client regarding same; draft Rebuttal Facts section; review and analyze outline of direct examination of Lynn Tincher-Ladner.
07/11/2024	Polak, Jonathan G.	Partner	14.50	11,962.50	825.00	9.50	7,837.50 6402281	Billed	Continue work on reply brief; internal communications regarding same, including with local counsel; conference with D. Newman regarding exhibits and protocol; work on related papers including motions to seal and supplemental declarations; conference with client to prepare for hearing; continue work on examination outlines for hearing.
07/11/2024	Etienne, William M.	Associate	7.50	3,487.50	465.00	0.00	0.00 6402281	Billed	Travel to Jackson, MS for hearing on PTK's Motion seeking injunctive relief.
07/11/2024	Etienne, William M.	Associate	2.30	1,069.50	465.00	2.30	1,069.50 6402281	Billed	Prepare motion to seal reply in support of motion to seal motion seeking injunctive relief.
07/11/2024	Etienne, William M.	Associate	4.30	1,999.50	465.00	4.30	1,999.50 6402281	Billed	Revise reply in support of motion to seal motion seeking injunctive relief based on comments and decision seeking open courtroom with prohibition on publication of witness testimony; identify and incorporate case law in support of same.
07/11/2024	Etienne, William M.	Associate	2.40	1,116.00	465.00	2.40	1,116.00 6402281	Billed	Evaluate Defendants' exhibits in support of Opposition to PTK's Motion seeking injunction relief; prepare objections (e.g., hearsay, authentication) regarding same.
07/11/2024	Etienne, William M.	Associate	0.90	418.50	465.00	0.90	418.50 6402281	Billed	Review supplemental declaration of Dr. Tincher-Ladner; provide suggested edits to rebuttal in support of Motion seeking injunctive relief.
07/11/2024	Etienne, William M.	Associate	1.20	558.00	465.00	1.20	558.00 6402281	Billed	Review direct examination outline of Dr. Tincher-Ladner.

Date	Name	Description	Orig Hrs	Orig Amt	Orig Rate	Rev Hrs	Rev Amt	Invoice	Status	Narrative
07/11/2024	Smoot, Rachel A.	Associate	10.20	4,794.00	470.00	10.20	4,794.00	6402281	Billed	Draft Supplemental Tincher-Ladner Declaration; draft Motion to Seal Rebuttal Brief in Support of Motion for Temporary Restraining Order, Preliminary Injunction and/or Gag Order; revise and edit Declaration and Rebuttal Briefs; compile and finalize exhibits for Supplemental Tincher-Ladner Declaration; confer with co-counsel regarding Defendants' exhibits and preparation of objections to same; revise and edit objections to Defendants' exhibits; attention to response to PTK's objections to Defendants' exhibits and Defendants' objections to PTK's exhibits; review and analyze case law related to self-authentication of Page Vault documents; draft timeline of most recent productions in advance of hearing.
07/11/2024	Sears, Hayley A.	Associate	6.70	2,512.50	375.00	6.70	2,512.50	6402281	Billed	Participate in call with Mike regarding exhibits, draft objections to Defendants 50 exhibits used in response to Pl/gag order motion, discuss various objections with Mike Etienne, incorporate Jonathan Polak's edits into draft, and email DeAnn to get filed.
07/12/2024	Polak, Jonathan G.	Partner	9.00	7,425.00	825.00	9.00	7,425.00	6402281	Billed	Continue preparation for hearing; attend hearing.
07/12/2024	Polak, Jonathan G.	Partner	6.00	4,950.00	825.00	0.00	0.00	6402281	Billed	Travel back to Indianapolis.
07/12/2024	Etienne, William M.	Associate	1.30	604.50	465.00	1.30	604.50	6402281	Billed	Organize all documents related to PTK's briefing in support of TRO and Defendants briefing opposing same to offer as exhibits during hearing.
07/12/2024	Etienne, William M.	Associate	0.80	372.00	465.00	0.80	372.00	6402281	Billed	Review Fifth Circuit case law regarding "editorialization" of claims in connection with PTK's proposed language for injunction; provide argument for hearing regarding same.
07/12/2024	Etienne, William M.	Associate	0.40	186.00	465.00	0.40	186.00	6402281	Billed	Obtain and organize cases cited in PTK's briefing in support of injunctive relief and in Defendants' briefing in opposition.
07/12/2024	Etienne, William M.	Associate	7.80	3,627.00	465.00	7.80	3,627.00	6402281	Billed	Participate in hearing regarding PTK's Motion seeking injunctive relief, including supporting direct examination of Dr. Tincher-Ladner and objections to Defendants' cross examination of same; discuss strategy regarding same.
07/12/2024	Etienne, William M.	Associate	7.40	3,441.00	465.00	0.00	0.00	6402281	Billed	Travel from Jackson, Mississippi to Indianapolis, IN after first portion of hearing on PTK's Motion seeking injunctive relief.
07/12/2024	Smoot, Rachel A.	Associate	7.50	3,525.00	470.00	0.00	0.00	6402281	Billed	Prepare for and attend hearing on Motion for Temporary Restraining Order, Preliminary Injunction, and/or Gag Order.
07/12/2024	Peluchette, Neil R.	Associate	0.60	252.00	420.00	0.60	252.00	6402281	Billed	Researching affidavit process for PageVault if needed for hearing; email correspondence regarding same.
07/15/2024	Polak, Jonathan G.	Partner	1.20	990.00	825.00	1.20	990.00	6402281	Billed	Receive and review motion to de-designate AEO materials; consider response; exchange emails with D. Newman regarding resolution of same; conference with Lynn Tincher-Ladner regarding same; prepare draft order and circulate same to D. Newman; finalize and file same.
07/15/2024	Smoot, Rachel A.	Associate	0.30	141.00	470.00	0.30	141.00	6402281	Billed	Attention to Emergency Motion to De-Designate AEO Documents.
07/16/2024	Polak, Jonathan G.	Partner	6.00	4,950.00	825.00	0.00	0.00	6402281	Billed	Travel to Jackson for TRO hearing.
07/16/2024	Polak, Jonathan G.	Partner	1.20	990.00	825.00	1.20	990.00	6402281	Billed	Continue work on M. Moradian cross-examination for TRO hearing.
07/16/2024	Smoot, Rachel A.	Associate	0.10	47.00	470.00	0.10	47.00	6402281	Billed	Email Court regarding Zoom link for upcoming hearing.
07/17/2024	Polak, Jonathan G.	Partner	10.50	8,662.50	825.00	10.50	8,662.50	6402281	Billed	TRO hearing and client conferences.
07/17/2024	Smoot, Rachel A.	Associate	6.50	3,055.00	470.00	6.50	3,055.00	6402281	Billed	Prepare for and attend hearing on motion for temporary restraining order, preliminary injunction, and/or gag order.
07/17/2024	Etienne, William M.	Associate	9.20	4,278.00	465.00	9.20	4,278.00	6402281	Billed	Prepare for and participate in injunctive relief hearing.
07/18/2024	Polak, Jonathan G.	Partner	6.00	4,950.00	825.00	0.00	0.00	6402281	Billed	Travel back to Indianapolis.
07/19/2024	Etienne, William M.	Associate	6.50	3,022.50	465.00	0.00	0.00	6402281	Billed	Travel from Jackson, Mississippi to Indianapolis.
07/23/2024	Smoot, Rachel A.	Associate	3.40	1,598.00	470.00	3.40	1,598.00	6402281	Billed	Confer with client and co-counsel regarding latest Honor Society online attacks; review and analyze latest publicly available information; draft Supplemental Declaration of Lynn Tincher-Ladner; draft Notice of Filing Supplemental Exhibits.
07/23/2024	Peluchette, Neil R.	Associate	2.70	1,134.00	420.00	2.70	1,134.00	6402281	Billed	Review of PTK Wikipedia page; Edits to same; Correspondence with Wikipedia regarding security access to page.
07/24/2024	Polak, Jonathan G.	Partner	0.80	660.00	825.00	0.80	660.00	6402281	Billed	Continue attention to Wikipedia changes; exchange multiple communications with client; review and revise draft Declaration from Tincher-Ladner on same.
07/24/2024	Polak, Jonathan G.	Partner	0.50	412.50	825.00	0.50	412.50	6402281	Billed	Continue work on notice of supplemental evidence.
07/24/2024	Smoot, Rachel A.	Associate	1.70	799.00	470.00	1.70	799.00	6402281	Billed	Revise and edit Supplemental Tincher-Ladner Declaration; multiple emails with client and co-counsel regarding same; compile Exhibits for same.
07/24/2024	Peluchette, Neil R.	Associate	2.90	1,218.00	420.00	2.90	1,218.00	6402281	Billed	Additional review of PTK Wikipedia page; Edits to same; Correspondence with Wikipedia regarding security access to page.
07/26/2024	Smoot, Rachel A.	Associate	3.40	1,598.00	470.00	3.40	1,598.00	6402281	Billed	Review and analyze Motion to Strike; confer with co-counsel regarding same; draft Response to Motion to Strike, including reviewing and analyzing case law in support of Response.
07/27/2024	Smoot, Rachel A.	Associate	1.00	470.00	470.00	1.00	470.00	6402281	Billed	Revise and edit Response in Opposition to Motion to Strike; confer with co-counsel regarding same.
07/27/2024	Polak, Jonathan G.	Partner	0.50	412.50	825.00	0.50	412.50	6402281	Billed	Continue work on response to motion to strike; exchange emails with Rachel Smoot regarding same.
07/28/2024	Smoot, Rachel A.	Associate	0.60	282.00	470.00	0.60	282.00	6402281	Billed	Attention to email from co-counsel regarding Opposition to Motion to Strike; revise and edit same.
07/29/2024	Polak, Jonathan G.	Partner	0.90	742.50	825.00	0.90	742.50	6402281	Billed	Continue work on response to motion to strike; circulate draft on same.
07/29/2024	Smoot, Rachel A.	Associate	0.80	376.00	470.00	0.80	376.00	6402281	Billed	Revise and edit Response to Motion to Strike; confer with co-counsel regarding same.
07/30/2024	Smoot, Rachel A.	Associate	0.60	282.00	470.00	0.60	282.00	6402281	Billed	Confer with co-counsel regarding Response to Motion to Strike; revise and edit Memorandum in Support of Motion to Strike; draft Response to Motion to Strike; revise and edit same.
08/07/2024	Polak, Jonathan G.	Partner	0.30	247.50	825.00	0.30	247.50	0	Unbilled	Receive and review reply in support of motion to strike; prepare email to client regarding same.
Totals:			513.20	266,895.50		455.20	229,451.00			

EXHIBIT A-5

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION

PHI THETA KAPPA HONOR SOCIETY PLAINTIFF/COUNTER-DEFENDANT

VS. CIVIL CASE NO. 3:22CV208-CWR-RPM

HONORSOCIETY.ORG., INC., DEFENDANTS/COUNTER-PLAINTIFFS
MICHAEL MORADIAN,
HONOR SOCIETY FOUNDATION, INC.

VS.

DR. LYNN TINCHER-LADNER

TRANSCRIPT OF EVIDENTIARY HEARING

VOLUME 1 OF 2

BEFORE THE HONORABLE CARLTON W. REEVES
UNITED STATES DISTRICT JUDGE

JULY 12, 2024
JACKSON, MISSISSIPPI

REPORTED BY: TERI B. NORTON, RMR, FCRR, RDR
Mississippi CSR #1906

501 E. COURT ST., STE. 2.500
JACKSON, MISSISSIPPI 39208
(601) 608-4186

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22 DEREK NEWMAN, ESQUIRE
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ALSO PRESENT: DR. LYNN TINCHER-LADNER
MR. MICHAEL MORADIAN

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VOLUME 1

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DR. LYNN TINCHER-LADNER

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1 **THE COURT:** Good morning. You may call the case,
2 Twana.

3 **THE CLERK:** The Court calls Phi Theta Kappa Honor
4 Society versus HonorSociety.Org., Inc. et al, Civil Docket No.
5 3:22cv208-CWR-RPM.

6 **THE COURT:** All right. Good morning. I know we are
7 here this morning for the hearing on the temporary restraining
8 order and preliminary injunction. I take it the parties have
9 not resolved their differences, so they are here this morning,
10 so I know you didn't come here to announce that you had
11 resolved it.

12 I think the first thing we need to take up are the motions
13 or the requests to seal -- to restrict the filings in this case
14 and the related motions with respect to that issue so that we
15 can proceed in a way that we have to in case the Court were to
16 grant the particular motion. I think that's where we should
17 start first, because those motions -- the motions have not been
18 officially filed on the record yet, I don't think. Right? I
19 know the parties have submitted them to the Court, and there
20 are motions to -- for leave to file restricted access and
21 sealed documents and things of that sort, so I don't think the
22 preliminary injunction motion has actually been filed on the
23 record yet along with the related exhibits. That's my
24 appreciation. Nor have the responses. Right? I mean, do the
25 parties agree that that's where we should start?

1 **MR. WALLACE:** Fine.

2 **THE COURT:** If that's not where we should start, then
3 we can go straight into the merits.

4 **MR. POLAK:** Jonathan Polak. We talked about this the
5 other day on our scheduling conference, right?

6 **THE COURT:** Right.

7 **MR. POLAK:** And I think there are two issues. One is
8 on the paper, a matter of what is on file with the Court. And
9 then the second issue, which I think was probably the more
10 salient issue, is are we going to lock the doors.

11 Let me address the second one first because it may clarify
12 how we handle the first one. With respect to locking doors, we
13 don't see any reason for that. There's nobody here in the
14 courtroom other than parties. We think that when you hear the
15 evidence, you will be sufficiently persuaded that certainly
16 people should not talk about what happened today in this
17 courtroom because we are here because of the publication of
18 things in this case to -- over the internet, over social media,
19 all of those things.

20 So we think that you are going to be persuaded at the end
21 to admonish the parties at minimum to not broadcast what was
22 said today. Dr. Tincher-Ladner has some very deeply personal
23 things she is going to talk about here today. We don't need
24 Mr. Moradian to be publicizing that across the internet. She
25 is also going to be talking about things that are deeply

1 meaningful to the nonprofit that she runs. We don't want that
2 publicized around the internet. And that is why we filed it
3 initially under seal because we did not want to do more damage
4 by bringing this motion than what they have already done to the
5 company and to Dr. Tincher-Ladner.

6 So to answer the question that you asked us during the
7 scheduling conference, which I did not provide an answer to at
8 the time, I asked for some ability to think about it, the
9 answer is, no, you do not need to close out the courtroom.
10 Dr. Tincher-Ladner is going to testify openly about it. And we
11 trust that the Court will enter appropriate admonitions and
12 instructions to the parties to not take information here and
13 use it to their competitive advantage.

14 With respect to the documents that are filed, I think what
15 we can do is proceed with that information under seal. The
16 information that's there is the very same stuff that we are
17 worried about them publicizing over the internet because of why
18 we are here. It only makes sense for us to keep that under
19 seal. And we cited a bunch of cases for you that spoke to it.
20 My colleague, Mr. Etienne, can speak more specifically to those
21 cases since he handled the briefing on it, if you have
22 questions about specific cases.

23 I know they have First Amendment concerns, open court
24 concerns, but they themselves have filed a lot of documents
25 under seal, as have we in connection with different filings.

1 These are documents that have been exchanged in discovery that
2 are marked AEO or confidential. There is nothing extraordinary
3 about that, and I don't think it impedes the interest of
4 justice, which really is what we are talking about here. Does
5 it impede the interest of justice to keep, at least for right
6 now so we can get about the business of presenting evidence, to
7 keep all of that under seal, and then the Court can figure out
8 at the end of this what it wants to do? If it hears things
9 that it goes, yeah, okay, I get it, I don't think that ought to
10 be a matter of public record, then the Court can enter an
11 appropriate order or series of orders around that. If the
12 Court hears the testimony and goes, I'm not convinced, I'm not
13 persuaded, I think it's okay, then the Court can enter the
14 orders that it deems appropriate around that, including on the
15 motions to seal.

16 That is how I think we ought to proceed. That way we can
17 get to the business of the day, which is the testimony that you
18 need to hear about the underlying harm that has happened to PTK
19 and Dr. Tincher-Ladner personally.

20 **THE COURT:** Okay. Thank you.

21 **MR. NEWMAN:** Good morning, Your Honor.

22 **THE COURT:** Good morning.

23 **MR. NEWMAN:** Derek Newman. The United States Supreme
24 Court and the Fifth Circuit Court of Appeals have been clear
25 that public proceedings are open to the public with very few

1 exceptions, such as trade secrets, national secrets. PTK's
2 counsel just indicated that the reason why they would like
3 these documents to be sealed is because the Court is going to
4 hear stuff that is very personal. There's no argument that the
5 materials fall within the scope of the protective order or any
6 of the exceptions that the Supreme Court or the Fifth Circuit
7 have laid out.

8 I'm going to spare the Court of additional argument. I
9 think our papers are clear, but I just wanted to be clear about
10 our position, which is we believe that nothing should be
11 sealed, that the public should have a right to access, that the
12 relief sought here today is extreme and the public has a right
13 to see how the proceedings lay out and the Court comes to its
14 conclusion. Thank you.

15 **THE COURT:** All right. I will hear from the parties.
16 I will hear the evidence. Absent from the briefing on this, I
17 believe, at least I could have overlooked it, but the Fifth
18 Circuit has been fairly clear recently on sealing and unsealing
19 and closed proceedings. The *Binh Hoa Le* case, 990 F.3d 410,
20 Fifth Circuit 2021, they have admonished trial courts. They
21 say repeatedly -- well, maybe they didn't use that word, but
22 Judge Willett sort of expressed real frustration with parties
23 and Courts closing proceedings. So that will guide how I look
24 at this and hear the evidence and all of that.

25 The *June Medical Services, LLC versus Phillips* 22 F.4th

1 512, Fifth Circuit 2022, is another case since the *Binh Hoa Le*
2 case. And just for guidance purposes only, I know several
3 District Courts and others and the Fifth Circuit have cited
4 *Binh Hoa Le* a number of times since then as well, but there's a
5 *Sharjin versus Sharjin*. It's a case out of the Eastern
6 District of Louisiana, 2024 Westlaw 493443, Eastern District of
7 Louisiana, 2024.

8 So, basically, the *Binh Hoa Le* case, at pages 417 through
9 421, lays out several different things about the Court should
10 be ungenerous, for example, with their discretion to seal
11 judicial records. "The public's right of access to judicial
12 proceedings is fundamental," according to the Court. "Judges
13 must protect public accessibility for three mutually
14 reinforcing reasons: The public has the right to monitor the
15 exercise of judicial authority; judges are the primary
16 representatives of the public interest in the judicial process;
17 and, third, the judiciary's institutional legitimacy depends on
18 public trust. Public trust cannot co-exist with a system
19 wherein important judicial decisions are made behind closed
20 doors and where its private litigants do the closing."

21 Now, there are occasions where you are talking about trade
22 secrets or the identities of confidential informants and things
23 of that sort, but the Court should take a very measured and
24 document-by-document analysis. In other words, we just can't
25 be too broad, I don't think in doing it. But *Binh Hoa Le* makes

1 the point that "At the discovery stage," and they emphasize
2 discovery stage -- "discovery, rather, when parties are
3 exchanging information, a stipulated protective order under
4 Rule 26(c) may well be proper. Party-agreed secrecy has its
5 place, for example, in honoring legitimate privacy interests
6 and facilitating the efficient exchange of information. But at
7 the adjudicative stage," and they highlight adjudicative stage,
8 "when materials enter the court record, the standard for
9 shielding records from public view is far more arduous. The
10 secrecy of judicial records, including stipulated secrecy, must
11 be justified and weighed against presumption of openness that
12 can be rebutted only by a compelling countervailing interest
13 favoring nondisclosure. All too often judicial records are
14 sealed without any showing that secrecy is warranted or why the
15 public's presumptive right of access is subordinated. This
16 mistake harms the public interest, however interested the
17 public is likely to be. Sealings are no less rampant in low
18 profile cases than in high profile cases featured at the front
19 page or the Oscar stage," and so forth and so on.

20 So I'm sort of guided by that notion, and I will hear the
21 parties out. But at this point in time, I don't think the
22 standard has been met for sealing what has been -- or placing
23 under seal what potentially might be filed or to close the
24 courtroom for these purposes. So I'm guided by that. I will
25 hear the parties. You know, if there's a point or two that you

1 want the Court to consider that ought to be closed from the
2 public in some way, we will take it up at that point in time.

3 **MR. POLAK:** Thank you, Your Honor, for the guidance
4 and the instructions. To follow on on your point, I think
5 that -- I got a sense as to where the Court is going with this.
6 We would like the ability to at least, after this hearing is
7 completed, to tender a redacted version so you can see exactly
8 what -- like, with Dr. Tincher-Ladner's declaration, the
9 original one, I think there are probably only four or five
10 paragraphs that we actually truly care about, out of a
11 65-paragraph declaration.

12 So taking the guidance that you've given us that you want
13 us to be more rifle shot on this as opposed to whole cloth, we
14 would just like the ability to submit that, after the hearing
15 is concluded, next week so that the Court may review that to
16 determine whether that is sufficient to meet that narrower
17 approach that you are talking about.

18 **THE COURT:** Okay. I will grant that request.

19 **MR. POLAK:** Thank you. Now, are we ready to proceed,
20 and are the parties ready to tell me how they wish to proceed?

21 **MR. WALLACE:** Your Honor, I told you on Monday the
22 law hadn't changed since the last time we were here, and I
23 stand by that. If you have questions about the briefs that we
24 have submitted, we would be happy to address them, but
25 otherwise, I'm happy to have Mr. Polak tell you what he has

1 discussed with the other side about how to present evidence
2 today.

3 **THE COURT:** Okay. All right.

4 **MR. POLAK:** I think we have good news for you, that
5 Mr. Newman and I met on Wednesday evening, and we discussed the
6 issue of witnesses, which was a topic that you asked us to talk
7 about. There are multiple declarations that have been
8 submitted, but in terms of live testimony, the only live
9 testimony is going to be from Dr. Tincher-Ladner and
10 Mr. Michael Moradian.

11 That doesn't mean that we won't be relying on the
12 declarations that have been submitted, but that is -- for
13 example, you have a declaration from me proving up some
14 documents. You have a declaration from Mr. Derek Linke, who is
15 not here, but he is a colleague of Mr. Newman's, that also
16 attempted to prove up some documents. You also have
17 declarations from two women concerning some events that
18 happened about ten years ago. I understand that they are not
19 going to be called live. I had a conversation with Mr. Newman
20 about that, and that's not going to happen. In terms of the
21 witnesses, we are one hundred percent agreed on what is going
22 to happen.

23 Now, there is the issue of exhibits, and the Court
24 probably is aware that the parties both filed objections to
25 each other's evidence yesterday, and we objected to most of

1 their evidence on the basis that it was either not
2 authenticated properly or was hearsay, knowing full well that
3 in an injunction proceeding, the standards for admissibility
4 are relaxed a little bit, not a lot but a little bit. It is
5 different. But we do have some concerns as to the authenticity
6 of those documents and the -- and some other issues regarding
7 hearsay.

8 Mr. Newman, in that conversation I had with him, he asked
9 me whether we were going to stipulate to the admissibility of
10 exhibits, and I told him, well, I have some concerns about your
11 exhibits. He then said, Okay, well, if that's the way we are
12 going to do it, then I need to file my own objections, which he
13 did, and he objected to some of the authenticity of some of our
14 documents, and I believe there are also some hearsay objections
15 in there.

16 Because this is a bench trial as opposed to a jury trial,
17 my suggestion is that we go ahead and proceed with the
18 testimony subject to the objections that have been asserted.
19 You are well-versed on the rules of evidence. As you hear it,
20 you can make determinations as to what is admissible and what
21 is not. You have our objections. To give you an example of
22 the type of objection that we have made, counsel for Honor
23 Society has submitted a series of exhibits, I think there are
24 about 20 of them, that are documents that they received through
25 the FOIA requests that we were here about last time that have

1 now, even though they were not made for the purposes of
2 litigation, was what they told you, they now are very much a
3 part of the litigation, curiously. So we now have these
4 exhibits.

5 So what does that mean? You have an affidavit or a
6 declaration from Mr. Linke or Mr. Moradian, I think it's Mr.
7 Moradian, that says, Attached to my declaration are true and
8 correct copies of documents I received from University X,
9 College X. That's not authentication of a document. That's
10 authentication that you received the document, but that's not
11 authentication of the underlying document. Right? Only the
12 school can authenticate that document.

13 Same thing goes with a hearsay declaration. There's no
14 business record predicate built up. I don't even know that
15 these documents are business records. They aren't documents
16 that were kept in the ordinary course of business for sure.
17 These are documents that were created to, in chart form, to
18 give to them for the purpose of how many people are within a
19 certain GPA, how many students are full-time enrolled, that
20 type of thing. So this is all hearsay.

21 I flag that for you not to argue the point, but I flag it
22 for you because I know they are going to be trying to present
23 this evidence, and I think we can handle the objections two
24 ways. I can either, as they attempt to use the document, I can
25 just step up and say, Judge, this is a document we object to,

1 these are the reasons why, so you then understand what our
2 objection is, and you can take the testimony for what it is.
3 Or we could argue it out now in advance. My preference would
4 be not to argue it out in advance because that would take
5 probably about an hour and a half to go through all of our
6 exhibits and all their exhibits. I think it probably makes
7 more sense to do it the other way.

8 **THE COURT:** Okay. Let me ask you this. Again, I
9 know the parties are in the throes of discovery right now,
10 still, I think, in the underlying -- or in this action, and I
11 presume that there's FOIA information and other information
12 that the parties are getting from third parties, and everything
13 else is being produced to each other. And obviously before any
14 of that material is to be used in any trial as an exhibit at
15 the trial at the end of the day, the parties will have another
16 opportunity at least to object or at least -- well, to either
17 make sure that the objections are avoided by making sure that
18 documents come within the rules of evidence in some way or
19 either the objections and stuff are preserved at the pretrial
20 order. But I assume that these documents that each party has
21 now are subject or at least discoverable in some way under Rule
22 26, and the parties are, you know -- they are responsive to
23 some document request or some other way where the parties are
24 exchanging this information.

25 **MR. POLAK:** With a small subset of their documents, I

1 would completely agree with you, Your Honor. The evidentiary
2 defects ultimately probably are overcomable. For example, they
3 just attached printouts of websites. They don't give the date,
4 the time, the place.

5 I have a case for you. I think it's the *Perfect 10* case.
6 I believe the citation is 213 F.Supp.2d 1146, and this was a
7 case where, on an injunction hearing actually, the Court
8 allowed -- the parties basically, one of the parties stapled a
9 printout of a website to a declaration and said, this is a true
10 and correct copy of the website. They didn't provide the date,
11 didn't provide the time, didn't provide the web address, didn't
12 provide any of that information that would ordinarily
13 authenticate something. But in that case, the party did
14 provide that information, and the Court found that because they
15 provided date, time and place, it was okay. That is the
16 opposite of what we have here, of course. But could they
17 ultimately overcome that at trial? Could they cure that up
18 with the proper authentication? Sure, absolutely. But for
19 purposes of this injunction proceeding, they did not, and the
20 *Perfect 10* case would seem to suggest that it would be
21 perfectly within your province to reject that testimony because
22 it is fatally defective. But perhaps Mr. Moradian can, on the
23 stand, clean that up, and I look at that as a minor issue, and
24 it's only a few documents.

25 The bulk of the documents, though, like the FOIA requests,

1 are uncurable, and the reason why they are uncurable is that it
2 is highly unlikely that any community college is going to
3 provide a business records affidavit, not going to do it. They
4 don't even probably care for them because of the amount of
5 trouble they have put them through, sending three, four, five
6 records requests over the last several months to the same
7 colleges asking the same information. So I doubt seriously
8 that those schools are going to be wanting to cooperate on it,
9 and they don't have to. They would have to go to the AG's
10 office anyway in order to get that type of declaration. And
11 again, my guess is the AG's office has better things to do than
12 provide those types of documents.

13 But anyway, there's predicate issues, there's
14 authentication issues and those things, and I don't know that
15 they will ever be able to achieve it. Maybe in some universe
16 they can for some, but certainly not for all. So I don't want
17 this Court to be of the belief that that is something that is
18 like the prove-up of the website printouts. It is entirely
19 different.

20 I don't think they will ever be able to get those
21 documents into evidence. And that's the problem when you try
22 to prove your case through a FOIA request, through
23 extrajudicial discovery that they told this Court back in March
24 had nothing to do with this case. They told you, Judge,
25 multiple occasions, that was not for purposes of discovery in

1 this case, they weren't going to use these documents in this
2 case, it was for other reasons. And I will leave it to you to
3 decide whether those representations were true. We don't think
4 they were, but still, that's the danger of going and doing
5 that.

6 We don't have any of these documents. They can't get
7 those documents from us. We don't have the GPA or other types
8 of information. We do have information that shows the truth of
9 our ten-percent claim --

10 **THE COURT:** But you do have the -- the parties have
11 exchanged the information that anybody has received through a
12 FOIA request or otherwise?

13 **MR. POLAK:** They have given all of it to us, as we
14 understand. Correct.

15 **THE COURT:** All right. All right.

16 **MR. NEWMAN:** Your Honor, PTK cites that *Perfect 10*
17 case. It comes from the Ninth Circuit. We think it resolves
18 in our favor, but we think the Court should disregard it
19 because the Court should follow the Fifth Circuit, which has
20 held numerous times that preliminary injunction procedures are
21 informal, and presentation of otherwise inadmissible evidence
22 is allowed. The Court can rely on inadmissible evidence,
23 including hearsay. And the reason for that to me is obvious.
24 We were served with an emergency motion just a week ago. We
25 had a week to respond. We don't have time to do a year's worth

1 of discovery and get documents authenticated and the like. So
2 in a preliminary injunction, the evidentiary rules are relaxed
3 so that parties can present their case through what would be
4 inadmissible at trial.

5 And another rationale for it is we are presenting to the
6 Court, not a jury, so the Court can look at the evidence and
7 make whatever conclusions Your Honor wishes and shouldn't have
8 to follow the rules of evidence like a jury would where there
9 would be substantial prejudice.

10 So I would suggest that Your Honor allow everything to be
11 admitted, and if the Court declines that, then this is going to
12 be a very long day where, do you recognize this document, how
13 do you recognize it, objection, and I don't think that that
14 serves the purposes of today, which is to take testimony to
15 augment the declarations, evaluate credibility of witnesses.
16 But it shouldn't be a full evidentiary hearing like you have at
17 trial because, as the Fifth Circuit has held several times,
18 hearsay evidence is admissible. Inadmissible evidence is
19 admissible for purposes of today's hearing.

20 **THE COURT:** Well, I will hear the parties out further
21 on this as we hear the testimony, but I assume there's an abuse
22 of discretion sort of standard along with the proposition you
23 have raised, I mean, that I don't think it will be appropriate
24 for the Court to simply rely on just anything that comes in for
25 purposes of any hearing. And I did -- and, of course, I do

1 understand that this motion was filed about a week or so ago,
2 but from reading the papers -- and I'm going to give the
3 parties the full opportunity, because I've only had this before
4 me for a week, so I'm not stepping on anyone's toes about how
5 they intend to get the information before me.

6 Do not assume that I have read every line in every one of
7 these documents, but I will say, yes, it was filed about ten
8 days ago, but from my reading of some of the papers, the full
9 scope of all of this was not apparent until about June 24th or
10 so, which it -- which means that they filed everything about
11 ten days after, seven or eight days after the full scope of
12 what they believe justified this filing. So I don't think they
13 should be faulted for that. When I say "they," I'm talking
14 about PTK should not be faulted for that, you know.

15 So we will all proceed from that point. But I will listen
16 closely to the evidence and the arguments about what evidence
17 ought to be considered and all of that. And I've seen somewhat
18 the debate between who is in the top ten and who is not and all
19 of that and how that is figured out, so I'm listening. I'm
20 listening. I'm reading.

21 Again, do not sit back and rest on the fact that you
22 believe that I've read -- I'm telling you that on the front
23 end -- read every one of these lines, but I've done my best.
24 We have done our best.

25 Okay. So I will -- we don't want to prolong anything.

1 But I will caution the parties that if you believe that, you
2 know, that the Court should hear or should not hear certain
3 evidence, I will give you the opportunity to raise the
4 objection. And if I don't rule today, I will consider all of
5 this stuff in crafting a ruling that I think might be
6 appropriate based on what I've heard.

7 So are we ready to proceed in any way?

8 **MR. POLAK:** We are, Your Honor.

9 **THE COURT:** All right. Defense ready?

10 **MR. NEWMAN:** Yes, Your Honor.

11 **THE COURT:** You may call your first witness, then, or
12 however you intend to proceed.

13 **MR. POLAK:** Thank you, Your Honor. PTK calls
14 Dr. Lynn Tincher-Ladner to the stand.

15 **THE COURT:** Okay.

16 **MR. POLAK:** Judge, while she is walking up there, we
17 are going to do the documents the old fashioned way. I have
18 notebooks for -- we have all of the exhibits, 1 through 50, or
19 1 through 48 for us, that PTK would be using.

20 **THE COURT:** Remaining standing. Please. I'm sorry.

21 **MR. POLAK:** My colleague here is going to provide the
22 Court one, the witness one, the opposing counsel with one. We
23 are not going to be messing with the electronic side of things.
24 I might use the Elmo on one or two, but I want the Court to
25 know that's the way we are going to proceed with the exhibits.

1 **BY MR. POLAK:**

2 Q. Good morning, Dr. Tincher-Ladner.

3 A. Good morning.

4 Q. I know you've already given us your name, but could you
5 just introduce yourself to the Court.

6 A. Yes, my name is Dr. Lynn Tincher-Ladner, and I am
7 president and CEO of Phi Theta Kappa Honor Society.

8 Q. How long have you been the CEO or president of PTK? And
9 is it okay if I call it PTK? We all know what we are talking
10 about that there. How long have you been the CEO or president
11 of PTK?

12 A. I was officially named by the board of directors in
13 January of 2016.

14 Q. Before that, did you have a position at PTK?

15 A. Approximately ten months before that, I was serving as the
16 interim CEO from about April of 2015 to January of 2016, but
17 also during that time and from July 1st of 2012, I was the
18 chief information and research officer for Phi Theta Kappa.

19 Q. Now, you introduced yourself as Dr. Tincher-Ladner. Do
20 you have a Ph.D.?

21 A. Yes, I do.

22 Q. What is that in?

23 A. It is a Doctorate of Leadership in Community College
24 Education from the Mississippi State University.

25 Q. Can you describe your academic background in relation to

1 community colleges?

2 A. I don't know if I was born first or started working for
3 community college first. I started in December of 1990 as an
4 instructor. I think one year prior to that, I was a high
5 school teacher. But I've worked in community colleges. But by
6 and large, the last several decades of my life, I have been in
7 a data science type position as a researcher for community
8 colleges here in Mississippi for the Southern Association of
9 Colleges and Schools for the accreditation of two and four-year
10 colleges, just a lot of really different positions that evolve
11 around analyzing data for community college students prior to
12 my CEO role.

13 Q. So is that why you became chief information officer for
14 PTK?

15 A. Well, I didn't apply to come to PTK. They wanted a
16 researcher. They also wanted someone who knew about computer
17 science. So they recruited me pretty heavily for probably
18 about a year before I felt like my children were old enough for
19 me to make a move to Jackson to work for someone other than
20 where I was working.

21 Q. So was it your reputation that caused them to hire you?

22 A. Yes. I was pretty well known and probably still am as an
23 institutional researcher, data science person, not just in
24 Mississippi but probably the United States.

25 Q. What is PTK?

1 A. Well, Phi Theta Kappa is a -- we don't like to say we are
2 the oldest. We like to say we were the first honor society for
3 students seeking credentials that are two years or less. So we
4 were established in 1918 in Missouri, but we moved to
5 Mississippi I believe in the 1930s, and we have been
6 headquartered in the state of Mississippi since that time.

7 Our mission is to -- it's a two-fold mission. One is to
8 honor the academic achievement of community college students
9 and students in those types of programs across other
10 institutions, but where we spend probably most of our time and
11 energy and resources is developing programming and ways for
12 these students to become stronger leaders and scholars.

13 Q. So are you organized for the colleges or is your mission
14 about the students?

15 A. The mission is about the students and providing their
16 recognition and also working with them to get to that next
17 level, whether that is transfer or going into employment.

18 Q. How many employees does PTK have?

19 A. Right now we have about 60. We probably have about ten
20 student interns too. We have another ten student success
21 coaches that work directly with coaching and one-on-one with
22 students, but as far as full-time employees, around 60.

23 Q. Are most of those here in Jackson?

24 A. I would say about 42 of them are here in Jackson, though
25 the rest of the key employees are spread out in the United

1 States. And I probably have employees in about 12 other states
2 other than Mississippi.

3 Q. Are there academic requirements to join Phi Theta Kappa?

4 A. Yes. Generally, you have to have -- the average is 3.5
5 GPA to join the honor society, and you also have to have
6 accumulated up to that point at least 12 hours of semester
7 credit, and that's when you are talking about a two-year
8 program. If a student is in a one-year program, then it's 6
9 hours of credit, but generally it is 3.5 and 12 hours of
10 credit.

11 Q. Can you describe for the Court how students are selected
12 for membership or prospective membership in Phi Theta Kappa?

13 A. Well, we leave that to the institutions to do the
14 selection and nomination of the students. We are not allowed
15 to ask students to be a part of our organization unless there
16 is a chapter at their institution. So a college first
17 petitions us for a chapter, and that may or may not be granted
18 by the board of directors, depending on the type of
19 institution. But once they receive a chapter, then they create
20 their charter, and then they put their rules of membership in
21 the charter, and then at that point they decide which students
22 are eligible, based on their rules, and they either invite
23 those students themselves, or they have us do it, or we might
24 both do it. It's not always the same at every college.

25 Q. I want to make sure we are all clear because this is

1 important for some other things we are going to talk about
2 here. PTK does not actively go out and identify students for
3 membership, does it?

4 A. No.

5 Q. The recommendations -- well, students have to be
6 recommended in order to join, right?

7 A. Correct. It is an invitation-only organization. The
8 college is the one that decides who is invited.

9 Q. Okay. So the college is the one that gives you names?

10 A. Yes. The college, if they want us to do their recruitment
11 or inviting students, they will upload the student information
12 to a secure system, and then from there we start inviting them
13 primarily by e-mail. Sometimes they may include the student's
14 home address, and they may also ask us to send a letter, and if
15 they do that, then we do that. But sometimes the college is
16 sending their own invitations and we are sending them too, so
17 it is primarily by e-mail, as far as the first time you would
18 hear from us.

19 Q. You mentioned you have chapters at these schools. Can you
20 tell the Court a little bit about what it means to have a
21 chapter at a community college?

22 A. Yes. They petition us. They fill out information. They
23 have to be accredited by a regional accreditor. We can't just
24 give a chapter to every institution just because they want one.
25 They have to have a minimum of being accredited, or sometimes

1 in the process of accreditation, we might do that. And once
2 they ask for a chapter, they must also appoint an advisor to
3 that chapter. So the chapter can't just sit there without
4 someone on campus who is in charge of the programming and the
5 activities of that chapter.

6 Q. You said they need to appoint an advisor. Who is the
7 "they" you are talking about?

8 A. The college president. They have to actually appoint an
9 advisor at their college. It might be a faculty member.
10 Generally, it is. But there are a lot of staff members. There
11 are administrators. We also have a couple of college
12 presidents that serve as the advisor of their own chapters.

13 Q. Does PTK pay those chapter advisors?

14 A. No, they are completely in a voluntary role. The chapter
15 itself, because the college has all of these policies that
16 drive their student activities, the chapters themselves are
17 under the administrative authority of the institution that they
18 are at. So the chapter, after it is established and while it
19 is being established, they have to follow the rules in our
20 constitution. But after that, the chapter and, like, anything
21 that happens with the chapter would need the attention of the
22 college and not really us.

23 Q. If there is a disciplinary issue with respect to an
24 advisor, a PTK advisor, does that come from PTK or does that
25 come from the college itself?

1 A. If there's an advisor that is in a disciplinary situation,
2 we would not do any of that. If we do receive sort of a
3 complaint or something, we might -- depending on the nature of
4 the complaint, we would automatically pass it to the college to
5 deal with whatever the situation is.

6 Q. Is that because that is an employee of the college, not an
7 employee --

8 A. Yes, they are an employees of the college. Our employees
9 are not working in the colleges.

10 Q. What is the American Association of Community Colleges?

11 A. The American Association of Community Colleges is the
12 AACC. It's also a membership, nonprofit organization. They
13 are based in Washington, D.C. Generally, all of the community
14 colleges or almost all of them are members of AACC, and the
15 mission of AACC is to be the advocacy arms for community
16 colleges, particularly with Congress in passing legislation
17 that would be beneficial to those colleges. They also do
18 leadership training. I'm sure they do other things, but that's
19 what kind of stands out in my mind about what their primary
20 function is.

21 Q. But in terms of who makes up the AACC, who is that? Is
22 that the community colleges themselves?

23 A. Well, the college presidents and probably their upper
24 administration go to their meetings. So they are usually
25 represented by the college president. But as far as the

1 membership, it's the college that is the member, not
2 individuals.

3 Q. So the colleges, the community colleges in the United
4 States are the ones that drive the decisions of the AACC?

5 A. Correct.

6 Q. So has the AACC given PTK any distinctions or
7 recognitions?

8 A. Yes, and it was probably the most important thing that
9 happened to Phi Theta Kappa and why we are as large as we are
10 today, that the AACC, in 1929, they were actually called the
11 AAJC, the American Association of Junior Colleges at that time,
12 and they recognized Phi Theta Kappa as the official honor
13 society for, at that time, junior colleges. So yes, we are
14 very proud of that recognition.

15 Q. Has the AACC ever withdrawn or retracted that
16 distinction --

17 A. No.

18 Q. -- of PTK being recognized as the official honor society
19 for community colleges?

20 A. No, they have not.

21 Q. So, in your mind, did that distinction come from the AACC
22 or from the community colleges themselves?

23 A. I guess it would have been both. But, yes, the AACC, at
24 their board meeting -- if you look at historical documents, it
25 happened during one of their board meetings.

1 Q. So that was 1929. We are sitting here in 2024. That is
2 almost a hundred years ago. Would it be accurate to say, well,
3 that was a hundred years ago, but that recognition no longer
4 applies today?

5 A. I think it very much does. Phi Theta Kappa, we are an
6 affiliate member of the AACC. They only have about -- I don't
7 know how many, but less than 25 nonprofit affiliates across the
8 United States that they have as affiliate members. Every year
9 Phi Theta Kappa recognizes scholars at their annual convention
10 at a president's breakfast. That happens every year for the
11 last fifty plus -- 54 years. I think we are on our 54th
12 anniversary of that.

13 I also serve on the board of the American Association of
14 Community Colleges, and so that's a very prominent role. It
15 was the first time in our history we were serving actually as a
16 board member. I just recently, last week, was appointed the
17 co-chair of the Student Success Commission in the United
18 States, so I will be serving alongside 20 or 30 other college
19 presidents as we work through initiatives that will increase
20 student success for community colleges students.

21 Q. So you have been present recently, recently being the last
22 five to eight years, where people from the AACC have recognized
23 PTK as the official honor society for community colleges?

24 A. Yes, and I mean, it's often something that we talk about
25 at that breakfast. I don't know if we say it every time, but

1 we always let the new presidents know that we were named that.

2 Q. And when you talk about it, nobody jumps up and raises
3 their hand and says, "That's not true." That doesn't happen,
4 does it?

5 A. No.

6 **MR. NEWMAN:** Objection, hearsay. I would rather not
7 be making objections throughout the day. I would like to know
8 if the Court would like the objections or whether we should
9 save them perhaps for post hearing brief so as to streamline
10 the hearing.

11 **THE COURT:** You should make any objections you think
12 are necessary. But is that an objection to that statement?

13 **MR. NEWMAN:** Yes, Your Honor.

14 **THE COURT:** It's overruled.

15 **BY MR. POLAK:**

16 Q. So with respect to these individual community colleges,
17 you are aware that some of those have websites that talk about
18 the PTK chapter?

19 A. Yeah, I think most often the community colleges in this
20 country are very proud of having Phi Theta Kappa on their
21 campuses. They use it to recruit high school students to come
22 there so that they will have student organizations that really
23 provide a lot of activity for those students that maybe are
24 used to that. But yeah, you will often -- I don't know if it
25 is on every community college website, but you will often see a

1 couple of pages dedicated to what the chapter is doing and who
2 the advisor is and elements like that.

3 Q. Do those websites that are created by the colleges refer
4 to PTK as the official honor society for their school?

5 A. I guess sometimes they do. Sometimes they just say, this
6 is our official honor society. In their minds, like, we are
7 their honor society, so they might have some permutation of
8 that language available to students to let them know that this
9 is our honor society that we've established, you know, whenever
10 it was established.

11 Q. Do you understand why we are in court today?

12 A. Yes, I do.

13 Q. What is that understanding?

14 A. We are here because of the online attacks from Honor
15 Society against Phi Theta Kappa and me personally.

16 Q. When did you first become aware of Honor Society speaking
17 publicly about Phi Theta Kappa?

18 A. I think it was the end of April. When they filed their
19 counterclaims, they had a press release about their lawsuit
20 against us, and that would have been the first time I saw a
21 public notification about them come out.

22 Q. So this press release was issued. Was that a problem for
23 you?

24 A. No. It was a press release, and we had released our own
25 press release, so it didn't bother me at all.

1 Q. You understood that since you had done a press release
2 when this lawsuit was filed in 2022, it wasn't inherently
3 offensive to you when you saw the press release in April of
4 this year about their counterclaims?

5 A. It didn't bother me.

6 Q. Did you see that press release immerge itself into local
7 media?

8 A. I did. I saw the press release published here in Jackson
9 in a newspaper called the *Jackson Jambalaya*.

10 Q. It is a local newspaper?

11 A. It's a community newspaper. It has a fairly large
12 readership in this community.

13 Q. And you attached --

14 **MR. POLAK:** Actually, I attached as Exhibit 43,
15 Judge -- we aren't going to spend a lot of time looking at it,
16 but just so you know, it's in your evidence packet. Exhibit 43
17 is the *Jackson Jambalaya* article, and we would move for
18 admission of that into evidence.

19 So -- actually, I guess, according to Mr. Linke's
20 statements -- I'm sorry, Mr. Newman's statements before, I
21 don't know that we are actually moving for admission of our
22 documents into evidence. Is that correct, or do you want me to
23 move for admission?

24 **THE COURT:** They have been all attached to her
25 declaration, right?

1 **MR. POLAK:** My declaration, yes, but referenced, I
2 think, in hers.

3 **THE COURT:** I mean --

4 **MR. POLAK:** They are in the record.

5 **THE COURT:** -- I will take it for what it is worth,
6 so no need to object, I mean, unless you have a specific
7 objection. I'm going to -- since it is here with me, I'm going
8 to look at it. I've seen it.

9 **MR. POLAK:** Thank you, Your Honor.

10 **BY MR. POLAK:**

11 Q. Has anyone mentioned this article to you?

12 A. Yes. When the article was published, I think the very
13 next morning I had a communication with Jim McHale, who is the
14 CEO of the largest nonprofit here in Mississippi, the Woodward
15 Hines Foundation. He contacted me around 6:30 in the morning,
16 and so in his communication to me, his board chair on the
17 Woodward Hines Foundation -- not board chair, board member, I
18 don't remember that gentleman's name, but he had read it in the
19 *Jackson Jambalaya*, and he had let Jim know that it was there
20 and he was concerned, and he wanted Jim to explain it. And Jim
21 called me to get some more information.

22 And that was unfortunate because the Woodward Hines
23 Foundation is a strong grant supporter of Phi Theta Kappa here
24 in the state of Mississippi. They have provided about \$500,000
25 in moneys to help low income students in Mississippi over the

1 years, and so they had a very strong interest in anything
2 written about us that was negative.

3 Q. Did you witness any other actions of Honor Society to
4 publish that press release?

5 A. After that, as far as the press release portion of what
6 they have done, I did receive word from Dr. Dan Phalen, who is
7 a member of the Phi Theta Kappa board. He is president of
8 Jackson College in Michigan -- not this Jackson, Jackson,
9 Michigan. And apparently, he received an envelope -- not him.
10 His college received an envelope, and it just said "To Jackson
11 College." It didn't have a return address. It was just a
12 letter. And when they opened it, it was a copy of the press
13 release. And someone who opened that letter sent it to his
14 office, and he sent it to me and said, "We received this by
15 mail. I hope no one else is getting these by mail."

16 Q. You are experienced in issuing press releases, right?

17 A. Yes.

18 Q. Your organization has done that on multiple, multiple
19 occasions over the last ten years probably, right?

20 A. Yes.

21 Q. Did it seem strange to you that they would be mailing a
22 press release to people in hard copy?

23 A. Yes. I've never, in my years of doing any type of public
24 relations work for Phi Theta Kappa or otherwise, known someone
25 to mail a press release to someone.

1 Q. Do you have concerns over whether other people received
2 those by mail?

3 A. I do have concerns.

4 Q. Do you know the full scope of how many of those were
5 mailed?

6 A. I do not. And with this being a legal proceeding, I don't
7 know if people would reach out to me. And he did because he's
8 on the board.

9 Q. So we have talked about the press release and sort of this
10 strange mailing of hard-copy copies to colleges. Since that
11 time, have you seen an escalation of other efforts by Honor
12 Society to publicize this lawsuit?

13 A. Yes. After the press release, there was several weeks
14 later, I think it was sort of mid-July -- no, probably around
15 the July 11th time frame, there began -- we began seeing
16 articles written --

17 Q. Was it July 11th or June 11th?

18 A. I mean June 11th. Sorry. June 11th, we started seeing --

19 **THE COURT:** Is it 2024 --

20 **THE WITNESS:** Yes, sir.

21 **THE COURT:** -- or 2023?

22 **THE WITNESS:** Yes, Your Honor.

23 **MR. POLAK:** Just so the Court is clear on the timing,
24 the press release we were just talking about that was issued by
25 them and that was mailed by them from time to time was in --

1 **THE COURT:** There's no evidence that they mailed it.

2 **MR. POLAK:** -- 2024.

3 **THE COURT:** I mean, so far. I don't know what you
4 all have learned in discovery.

5 **MR. POLAK:** Well, you have her testimony that that's
6 what happened.

7 **THE COURT:** We have her testimony that somebody
8 received --

9 **MR. POLAK:** Correct.

10 **THE COURT:** -- an envelope that was unaddressed.

11 **MR. POLAK:** Correct, that contained the press
12 release.

13 **THE COURT:** The press release. But there's still a
14 gap there that says that they did it.

15 **MR. POLAK:** Fair enough. Absolutely, Your Honor.

16 **MR. NEWMAN:** Your Honor, I object to counsel making a
17 speech and testifying. I think all testimony should come from
18 the witnesses until argument.

19 **THE COURT:** Objection overruled.

20 **MR. POLAK:** I was merely clarifying for the Court.

21 **THE COURT:** I was just trying to figure out the press
22 -- what is Dr. Tincher-Ladner's testimony about when she
23 learned that there was a press release. I know the press
24 release was done after the counterclaim was filed. I assume
25 the counterclaim was sometime in 20 --

1 **MR. POLAK:** It was April of 2024, because we are
2 talking about the second amended counterclaim, not the
3 counterclaims that were filed back in 2023, some of which you
4 dismissed.

5 **THE COURT:** Okay. So this is April '24, the
6 counterclaim, a press release came out after that, and now we
7 are up to June of 2024.

8 **MR. POLAK:** Right.

9 **THE COURT:** And tell me what happened in June of
10 2024. There was some testimony about June.

11 **MR. POLAK:** Yes, sir.

12 **THE COURT:** Have her repeat that. I don't remember
13 what it was.

14 **MR. POLAK:** That's okay. What she was saying was
15 that around that time she started noticing an increase in the
16 distribution of information about this lawsuit and about the
17 claims in the lawsuit and those things.

18 **THE COURT:** Okay.

19 **BY MR. POLAK:**

20 Q. I believe, Lynn, that you said those efforts were online?

21 A. Yeah, after that, I did see them proceed out onto the
22 Instagram channel. And when they did that, they tagged my
23 personal account and they tagged Phi Theta Kappa with
24 additional information about the lawsuit and their imagery of
25 it or other things about it. But after that, I saw several

1 websites being involved in posting on their home pages of
2 different things about it.

3 And then the social media campaign moved to Twitter and
4 LinkedIn, so we have both the online publication of stories
5 about the press release and the press release itself, and then
6 we have this online activity around all of this.

7 Q. Let me break some of this down for the Court so the Court
8 can kind of understand. What it started with -- I think what
9 you said was it started with you seeing on social media -- can
10 you describe what -- by social media, you are talking about
11 Twitter or Instagram, those types of social media companies?

12 A. Right.

13 Q. Platforms. Just yes or no. Is that what you are talking
14 about?

15 A. Yes.

16 Q. So when you saw those, you saw -- you saw what, references
17 to this lawsuit or articles about you? What is it that you
18 were seeing?

19 A. It was numerous things. I saw articles about me in
20 particular, articles about the lawsuit. They were all written.
21 They looked like a reporter had written them. And it really --
22 all of that activity was sort of pointing to a website that had
23 about 5,000 pages of information about chapters and colleges
24 and Phi Theta Kappa and me --

25 Q. But, Lynn -- I'm sorry, Dr. Tincher-Ladner, those 5,000

1 websites didn't emerge at the same time the social media was
2 there, right?

3 A. No.

4 Q. Because as I recall -- well, let me ask it this way. When
5 the social media accounts, when you first became aware of the
6 social media accounts, did you notice that there were people
7 responding to it, because people can comment on social media,
8 right?

9 A. Yeah, the first preview of everything was on Instagram,
10 and the reason I knew about that is they tagged me. So it came
11 up as a notification on my phone that you have been tagged by
12 Honor Society. And then my phone blew up, and I went to
13 Instagram to look at the post, and at that time I saw --
14 because they are on Instagram, that is where a lot of our
15 current members are, a lot of our most active members, if you
16 think about the age group of our -- the average age of Phi
17 Theta Kappa is 28 years old. So you have a lot of students
18 that they were very upset about these allegations, so they
19 began commenting about how false this was. They began pushing
20 back --

21 Q. Let's be clear, Dr. Tincher-Ladner. When you say that
22 they were upset and they were commenting about false -- were
23 they commenting about PTK providing false information or were
24 they commenting about Honor Society's post being false?

25 A. Yeah, they were pushing back on them and making strong

1 cases for Phi Theta Kappa. And I don't have it in front of me,
2 but they were pro Phi Theta Kappa and anti whatever this was.
3 It went on for about 30 minutes, and all of a sudden, they took
4 that post down.

5 Q. So what you saw was, they posted the information on the
6 social media accounts, people started commenting positively
7 about PTK --

8 A. Um-hm.

9 Q. -- and then all of a sudden you saw those documents taken
10 down?

11 A. Yes. Then it went away.

12 Q. Okay. So what was your reaction when they took it down?

13 A. I thought, okay, that's good, you know. They -- maybe
14 they won't try that again, because of what happened. It didn't
15 really benefit them. In fact, it was bad for them. And
16 then --

17 Q. We will talk about then. I know you want to tell the
18 Court what has happened, but just follow my questions, if you
19 would.

20 A. Yes.

21 Q. So the social media posts, the comments and those things
22 were taken down off of Instagram, but Twitter remained, right?

23 A. I think Twitter -- I didn't know when the Twitter started,
24 but once I saw that, I started looking around, and I found all
25 of this stuff come out on Twitter as well.

1 Q. Now, you had mentioned that there were 5,000 websites.
2 Did the 5,000 websites emerge overnight or was there a
3 progression?

4 A. No, there was the Instagram attack, then there was
5 Twitter, and then there was some information on LinkedIn. But
6 while they were pushing those out, they kept pointing to an
7 ever-growing amount of information that was published on the
8 Honor Society Foundation's website. So it didn't start out
9 with 5,000 websites. It started out with several articles
10 about me and PTK, and then it grew to about a thousand pages.
11 And then within, like, a week or five days, it went from a few
12 articles to 5,000 pages of information for students to look at
13 and articles to see.

14 Q. We are going to look at those documents about the 5,000
15 pages, but the first thousand were all, for the most part,
16 related to specific pages about PTK and chapters for PTK,
17 right?

18 A. The first ones were about me personally that I saw. They
19 were --

20 Q. They were about you personally? They mentioned you by
21 name?

22 A. Yes.

23 Q. Okay. But then when it really got big, and it got to be
24 the first thousand websites, not just four or five or ten, but
25 the thousand websites, that first traunch of sites that you

1 saw, those related to individual pages for each of the
2 chapters, right?

3 A. Right. They had reference to the college name, the
4 chapter name, Phi Theta Kappa, and the word PTK abbreviated.
5 So they had --

6 Q. How many chapters do you have?

7 A. We have about 1250 chapters.

8 Q. So if you are going to create a separate web page for
9 every chapter, you would have to create around 1200 websites,
10 right?

11 A. Yes.

12 Q. And then if you are going to create more than that, let's
13 say you create four websites for every PTK chapter, that's
14 going to get you to around five thousand, right?

15 A. Right.

16 Q. Is that what you saw?

17 A. Right. When you went to them, and I didn't go to every
18 one of them, I went to dozens of them, but there appeared to be
19 this four different pages dedicated to each chapter at Phi
20 Theta Kappa at a certain college, and it was information on
21 different pages about -- it wasn't the press release at that
22 point. It was story-telling, one-sided inflammatory
23 story-telling about these efforts.

24 Q. Let's look at some of these documents that are in the
25 record. Open up your notebook, and if you can go to exhibit --

1 it is identified as A2 to my declaration, but I'm just going to
2 call these Exhibits 2, 3, 4. And because the defendant has
3 also identified documents using a numerical system, as well as
4 an alphabetical system, I'm just going to call it Plaintiff's
5 Exhibit 2. That way we can be clear that it is a document that
6 came from us.

7 **MR. POLAK:** And, Your Honor, if you will open to
8 Exhibit 2, and if you will turn to the second page there where
9 the actual graphic images are.

10 **BY MR. POLAK:**

11 Q. Okay. So we see here an image that was captured on
12 June 19th, 2024, by my firm. And it is at the Honor Society
13 Foundation.org website, correct?

14 A. Yes.

15 Q. So this is not Honor Society. This is Honor Society
16 Foundation published material?

17 A. Yes.

18 Q. So is this image at the top one of those things that you
19 were mentioning where they came after you personally?

20 A. Yes. I searched -- when I searched my name, I found
21 these --

22 Q. It says your name right there, right, in the title?

23 A. Yeah.

24 Q. It says, "Lynn Tincher-Ladner, alleged misleading
25 mastermind." Now, is that a picture of you?

1 A. I don't think I'm on the right thing here. I'm sorry.

2 Q. Are you on Exhibit A2, or Exhibit 2?

3 A. Okay.

4 Q. Is that a picture of you?

5 A. No, it's a picture of like me.

6 Q. You wear glasses?

7 A. I have glasses.

8 Q. She is wearing glasses, right?

9 A. Yeah.

10 Q. And this picture depicts someone in a cap and gown?

11 A. Yes, blue and gold regalia.

12 Q. The blue and gold is significant why?

13 A. That's our colors.

14 Q. That's Phi Theta Kappa's colors, right? And this lawsuit
15 is about confusion in part over the use of those colors by
16 Honor Society, right?

17 A. Yes.

18 Q. So what is that that this imaged woman is holding?

19 A. She is clutching a bag of money in a greedy way.

20 Q. So your name is there, and you have this photograph.

21 Actually, I'm sorry. It's not a photograph. Have you looked
22 for that image online?

23 A. I did try to, but I couldn't find it. I mean, when I
24 looked at this, I could tell it was probably generated through
25 AI, the way it looks.

1 Q. AI being artificial intelligence?

2 A. Yes. I mean, we have stock photography that we use from
3 time to time, and we purchase large -- you know, large
4 libraries of stock photography, and I had never seen anything
5 like this, so --

6 Q. So this has some dates around it as well, right? We see
7 that this has a date of June 11, 2024. What conclusion do you
8 draw from looking at that date? Was that the date it was
9 published?

10 A. That this was published on June 11th. I mean, that would
11 be what someone would assume.

12 Q. Then it says, "By Honor Society Foundation."

13 A. Yes.

14 Q. So that's a representation it is coming from the
15 Foundation, right?

16 A. Yes.

17 Q. And it's also on the Foundation website. Now, the
18 Foundation is a defendant in this case, but it is -- do you
19 know what it is and its relationship to Honor Society?

20 A. To my knowledge, Honor Society Foundation is a nonprofit
21 arm of Honor Society, and so I find it very curious that it
22 would be within the scope of a mission of a nonprofit to be
23 publishing things that are related to its for-profit arm.

24 Q. Let's look at the text here. There's text that's captured
25 on this feed underneath the image. It says, "In recent years,

1 the community college honor society landscape has been
2 scrutinized due to allegations of deceptive practices and
3 monopolistic behavior centered around Phi Theta Kappa and its
4 CEO, Lynn Tincher-Ladner." Has your organization been under
5 scrutiny?

6 A. No.

7 Q. In recent years?

8 A. No.

9 Q. Has anyone other than Honor Society and Mr. Moradian made
10 allegations concerning deceptive practices?

11 A. Not a single person, just Honor Society.

12 Q. And these alleged deceptive practices that are identified
13 in here were never identified by Honor Society prior to April
14 of 2024?

15 A. No.

16 Q. So is it a true statement that your organization has come
17 under scrutiny in recent years?

18 A. No.

19 Q. Is that misleading to anyone who reads it?

20 A. Very misleading. And when you read this article, this one
21 in particular, it says "some people," and "critics believe,"
22 plural. And it gives the reader this idea that there are
23 critics, as in lots of critics, and some people, and it's not
24 some, and it's not critic. And it also never mentions that the
25 critic singular is Honor Society. It tries to drive you into

1 this sort of psychologically, this nebulous idea that there are
2 all of these other things happening, and they are absolutely
3 not.

4 Q. And it is really only coming from one source?

5 A. Yes.

6 Q. And that person is sitting right there in that chair in
7 the courtroom?

8 A. Yes.

9 **THE COURT:** Hold on one second. When you say this
10 article, I presume, where it says "Read more," the article is
11 behind --

12 **MR. POLAK:** Right. It is not in this exhibit, but we
13 are going to go to that exhibit in a second. Because you are
14 correct, if you connect on that "Read more" button, it will
15 take you to an article on the internet separate, one of the
16 other 5,000 articles.

17 **THE COURT:** Okay. All right.

18 **BY MR. POLAK:**

19 Q. Going on, it says, "PTK's image has faced challenges due
20 to their alleged actions." Is that a true statement?

21 A. We have faced challenges since things like this got
22 published, but prior to that, we haven't faced any challenges.

23 Q. It goes on to say, "At the heart of this controversy is
24 Tincher-Ladner." Are you at the heart, or are you just trying
25 to do your job as an executive director of a nonprofit here in

1 Jackson?

2 A. Yeah, I'm not a misleading mastermind, and I'm not at the
3 heart of anything like what's being said in this article.

4 Q. So let's scroll through this document. There are other
5 images that are here that are linked to other articles, namely
6 these red alert images. What is your reaction when you see
7 these? What is the emotional reaction that you get when you
8 see these images of students running, of lightning in the
9 background, of a college administrator looking over her
10 shoulder there on page 6, "Red alert, Phi Theta Kappa," and
11 students standing around looking at a lightning bolt. These
12 apocalyptic-type images, what is your reaction to those?

13 A. They are so fake-looking and they are just so
14 inflammatory, and they are done this way so people will want to
15 look at them, and pictures of students being scared and
16 running. And just the one with our regalia is particularly
17 disturbing to me because this blue --

18 Q. That's on page 2 that has --

19 A. The second one.

20 Q. -- the students sitting in rows, and you are saying they
21 have the gold regalia?

22 A. Yes, the gold stole at a community college graduation is
23 our single-most outward facing identifier of who we are, and
24 that is what the public knows us as when they see those gold
25 stoles at a community college graduation. So for them to use

1 that in here is particularly just so identifying to us, you
2 don't even really have to read that it's about Phi Theta Kappa
3 in the title.

4 Q. Let me show you here. When we look at that particular
5 article with the students sitting in the rows, it is dated
6 June 19, 2024, "Phi Theta Kappa at Edmonds College, Lynnwood
7 campus, Alpha Alpha Lambda chapter of PTK." And we look at the
8 other title names. They are all the same, right? It says Phi
9 Theta Kappa at a particular college, and then it has the Greek
10 name associated with that chapter, right?

11 A. Yes. I mean --

12 Q. Just yes or no.

13 A. Yes.

14 Q. That's what you see, right?

15 A. Yes.

16 Q. So you told me before that there were, like, 5,000
17 websites created that were dedicated to each of these chapters,
18 that you have sometimes three or four websites for these. Is
19 that what you are talking about? These are the articles that
20 there were over a thousand of, maybe five thousand of, that you
21 were referencing in your testimony earlier, all with this
22 apocalyptic-type imagery?

23 A. Yes.

24 Q. So do you have a sense as to how people search for
25 information about Phi Theta Kappa?

1 A. Yes. I think these are so --

2 Q. My question for you is do you have a sense --

3 A. Yes, I have a sense.

4 Q. How would someone typically go and search for information
5 about PTK at a particular college?

6 A. Well, a student who has been invited at a particular
7 college, if they want to -- you know, a lot of our students are
8 first generation. Their parents never went to college. So
9 they are going to research what this is, and they are going to
10 go to a search engine, and they are going to type Phi Theta
11 Kappa, and they are going to type the name of their college.
12 They may not know the name of the chapter yet, but they will
13 definitely, I think, type those few things.

14 Q. So do you draw a conclusion about the use of those names
15 in these titles as far as what the intention is here with
16 respect to the way in which these articles are laid out and
17 titled?

18 A. Yes. The title contains any type of information the
19 student would be using to search. But further, the most
20 important part of a web page is its title. When you tag a
21 title, that's what the search engines, like Google, like Bing,
22 that's what it goes out and looks at to bring back information
23 to you. So using those keywords in a title is extremely
24 damaging as far as the students seeing this just when they want
25 to learn something about their chapter.

1 Q. Okay. I just -- I would like you to stay in Exhibit A2
2 but go to the third blue sheet that's inside Exhibit A2.

3 MR. POLAK: And, Judge, you've got in your notebook,
4 in Exhibit 2, there are a number of documents in it that are
5 separated by blue sheets. The one that we are looking for is
6 the third one, and it is titled, "Phi Theta Kappa at Sheridan
7 College, main campus, Iota Theta chapter of PTK."

8 MR. NEWMAN: May I ask a question about the exhibit?

9 THE COURT: Yes.

10 MR. NEWMAN: I have the book, and I can see
11 everything, thank you, but I just want to know, are these the
12 same exhibits you already filed?

13 MR. POLAK: They are.

14 MR. NEWMAN: So 2 here is A2 filed?

15 MR. POLAK: Right.

16 MR. NEWMAN: So the blue sheets are separating it,
17 but it's not different exhibit numbers?

18 MR. POLAK: Right. It was really just for ease of
19 testimony orientation.

20 MR. NEWMAN: I just wanted to understand. Thank you.

21 BY MR. POLAK:

22 Q. Okay. So when you clicked, there were different title
23 names, and then read more. One of those we looked at was for
24 Sheridan College. So when you clicked on that, is this the
25 website that comes up?

1 A. Yes.

2 Q. So let's take a look at this. First note that this is
3 also an Honor Society Foundation website, right?

4 A. Right.

5 Q. And we've already talked about why you would find that
6 curious. The second title is "Understanding the allegations
7 against Phi Theta Kappa and their impact on Sheridan College's
8 main campus." And below that we again see this language about
9 PTK coming under scrutiny that you have already identified as
10 false, right?

11 A. Yes.

12 Q. Let's go down to the section, "Impact on Sheridan
13 College's main campus." And we see here -- I will quote this
14 for the record. "While Sheridan College's main campus is not a
15 part of the lawsuit, it is essential to consider the potential
16 implications for its PTK chapter. The allegations against PTK
17 could affect the reputation of the honor society and, by
18 extension, the students associated with it."

19 What is your reaction when you see that in this article
20 prepared by The Foundation about the impact of these
21 allegations on students and on colleges?

22 A. I think right at the -- people don't read a lot of an
23 article, but the first point they are getting across is about
24 students. So they are letting students know, if students are
25 reading this, this is bad for students. So this is a direct

1 attack on potential, current, and future members of Phi Theta
2 Kappa. This is about students.

3 Q. So when you go up above that, it talks about allegations
4 against Phi Theta Kappa, and it says that "PTK is accused of
5 falsely claiming that its members represent the top ten percent
6 of their class." We are going to get into the details of that
7 here in a second, but is it true or false that PTK's membership
8 is in the top ten percent of their campuses?

9 A. Phi Theta Kappa's membership is in the top ten percent of
10 students on the campus.

11 Q. They also claim that it is false that you promise
12 significant scholarship opportunities. Does PTK offer
13 significant scholarship opportunities?

14 A. Yes, we do.

15 Q. How many dollars of scholarships -- just dedicated just
16 for PTK-only members, you have a foundation, how much in
17 scholarships do you give out a year on that?

18 A. Well, we have three types of scholarships, but the
19 foundation-type scholarships, I call those the competitive
20 scholarships, you apply for them through our foundation, they
21 have over a million dollars in funds that have been donated,
22 people who have left endowments. There are just a lot of
23 different opportunities in the foundation scholarships.

24 Q. And then they go on to say that it is false that you offer
25 an average of \$2,500 per member annually in scholarships. Is

1 it true or false that you offer more than \$2,500 in
2 scholarships on average to students?

3 A. It is true that the average scholarship -- this is
4 referencing another pot of scholarships. They are not
5 competitive. They are for members. So that is why we publish
6 it in this way. But the average scholarship is way above
7 2,500, but this is a true statement.

8 Q. Okay. So they go on to tell, then, but they warn
9 everybody in this article, beware, PTK lies, and the school
10 ought to do something about it, right? And they are also
11 saying here, students, you ought to reconsider whether you want
12 to join PTK because of what the allegations are that they claim
13 here?

14 A. Yes.

15 Q. And, you know, if we were to go and look at the other
16 4,999 or so websites that they created that are specific to
17 each college, would we see the exact same stuff?

18 A. Yes.

19 Q. So they don't say it just once in a press release. They
20 have said it five thousand times on line; is that right,
21 Dr. Tincher-Ladner?

22 A. Yes.

23 Q. So let's go to Exhibit 13. And this is also on the Honor
24 Society Foundation website, and it is a page that is titled,
25 "PTK alerts by community college." And they have here at the

1 top "Unveiling the truth about PTK," and then they list three
2 things: Deceptive advertising and false claims, misleading
3 scholarship information, leadership accountability. They have
4 those three things there.

5 But I think the point that I want you to note for the
6 Court is that if you were to flip through the remaining I think
7 23 pages, you see a link for every single PTK chapter that
8 exists, right?

9 A. Yes. Even the ones outside of the country. Yes.

10 Q. And you see above that a title that says, "Explore the PTK
11 alerts directory." Do you see that in the middle of the first
12 page, "Explore the PTK alerts directory"?

13 A. Yes.

14 Q. "This directory offers comprehensive information on PTK
15 chapters at various community colleges, providing critical
16 insights and transparency." Do these articles that you have
17 seen for each of these chapters provide your side of the story?

18 A. None of them.

19 Q. Now, Mr. Moradian sat in your deposition in February,
20 didn't he?

21 A. Yes.

22 Q. You told him about the falsity of their claim about the
23 top ten percent, didn't you?

24 A. We went through it.

25 Q. You told him about the falsity of the \$2,500 claim that he

1 is making here?

2 A. Yes.

3 Q. You told him about the falsity of all of what it is that
4 they are arguing in their complaint, right?

5 A. I did.

6 Q. And that was before the second amended complaint was even
7 filed?

8 A. I did, yes.

9 Q. So when he created these, or Honor Society Foundation
10 created these, it was done with knowledge that you have a
11 different story to tell, but they don't tell that here, do
12 they?

13 A. No.

14 Q. You've talked about these individual web pages for --
15 actually, let's make one more note here, staying on Exhibit 13.
16 Do you see the section there that says "Impact on Students and
17 Institutions," and it talks about here the misleading practices
18 of PTK. They don't even bother to use the word "alleged"
19 there, do they?

20 A. No, they --

21 Q. They just conclude that it is misleading, right?

22 A. Yes.

23 Q. And when you look at the -- the various comments at the
24 top about unveiling the truth about PTK, those are stated as if
25 they are facts, right? That it is a fact that PTK is engaged

1 in deceptive claims, right?

2 A. Yes, when they numerically bullet things like this and put
3 bold, that's where the eye goes, and there's no indication that
4 they are alleged.

5 Q. Right. And would it even matter if they said alleged?

6 A. No.

7 Q. Students aren't going to pick up on that, are they?

8 A. No, they are not.

9 Q. So you have -- what it is, you have these deceptive and
10 misleading claims in the first section that don't provide any
11 counter story, right? Is that right?

12 A. Yes.

13 Q. And then in the middle section, there's a statement about
14 "Impact on Students and Institutions" where we see the same
15 stuff we were looking at before where there is this big warning
16 to students, don't join PTK because of this, right?

17 A. Yes, impact on students.

18 Q. And the same thing with the colleges. They are
19 threatening the colleges, saying, if you continue to do
20 business with PTK, you are going to have an issue?

21 A. Yes. In each of the articles, there is information for
22 students, information for the colleges and their
23 administration, and then there is also information for faculty
24 and staff. So every single important constituent person
25 connected to us, there is a message for them in these articles.

1 Q. And let's look at Exhibit 12. This is just more of the
2 same, but this is Phi Theta Kappa Chapter Directory, it says at
3 the top. And it says, "Welcome to our comprehensive directory
4 of Phi Theta Kappa chapters. This page serves as a resource
5 for students, educators, and researchers to explore and
6 understand the numerous PTK chapters across the country,"
7 right?

8 A. Right.

9 Q. So it is pretty neutral when you read that first
10 paragraph, right?

11 **MR. NEWMAN:** Objection. Counsel has been leading the
12 witness through almost every question.

13 **MR. POLAK:** I will withdraw the question, Your Honor.

14 **THE WITNESS:** This is --

15 **THE COURT:** Hold on.

16 **THE WITNESS:** I would like to make a statement.

17 **THE COURT:** Hold on. Hold on, Dr. Tincher.

18 **THE WITNESS:** Sorry.

19 **THE COURT:** Let me rule. Objection is sustained. He
20 says he is going to withdraw. Rephrase your question.

21 **MR. POLAK:** Absolutely, Your Honor. Thank you.

22 **BY MR. POLAK:**

23 Q. Is this worded neutrally or some other way?

24 A. Some other way.

25 Q. Well, the first couple of sentences, is it worded

1 neutrally or some other way?

2 A. Some other way. But on this exhibit, they have hijacked
3 the Phi Theta Kappa Chapter Directory, and when people are
4 looking for a chapter directory, they are going to go here
5 instead of Phi Theta Kappa's website, or could.

6 Q. And then what we see is the same list of 23 or so pages of
7 additional -- of links to each of those other pages that they
8 have created about these things, right?

9 A. Yes.

10 Q. Okay. Now, we've talked about these web pages that were
11 created in relation to specific colleges. Let's look at
12 Exhibit 3 in your binder as well. And this is not an article
13 about the specific college. This is an article about just Phi
14 Theta Kappa. So is this on the Honor Society Foundation
15 website?

16 A. Yes.

17 Q. And the title is, "Is Phi Theta Kappa a big deal? No,
18 it's not." This one is dated June 11, 2024.

19 When you -- this content goes to the same issues we have
20 been talking about about alleged deceptive conduct by Phi Theta
21 Kappa, right?

22 A. Yes.

23 Q. Let's look at "Misleading exclusivity."

24 "Phi Theta Kappa often advertises itself as an exclusive
25 honor society, inviting students who supposedly fall within the

1 top ten percent of their class. However, this claim is
2 misleading." Is that neutrally written?

3 A. No.

4 **THE COURT:** What exhibit are you looking at?

5 **MR. POLAK:** I'm looking at Exhibit 3, Your Honor.

6 A. This image is so offensive to Asian students that it's
7 just incredulous.

8 **BY MR. POLAK:**

9 Q. Do you have any -- well, we will let Mr. Moradian answer
10 for that. There's a section down here about data privacy. We
11 haven't talked about that yet. The claim is, "PTK has also
12 been accused of selling and sharing member data under
13 misleading circumstances." Has anyone, other than Honor
14 Society, made that accusation?

15 A. No one.

16 Q. In the second amended complaint, they contend that you did
17 this in connection with PTK Connect. Can you explain for the
18 Court what PTK Connect is?

19 A. Yes. PTK Connect is a proprietary database that we
20 created with a grant from the Dell Foundation. And what it
21 does is it allows four-year colleges to enter into the portal
22 and create profiles with scholarships, with other information
23 for students to learn about their four-year college. But it
24 also is for the students too. The students go into the portal,
25 they can search for colleges, they can search for scholarships,

1 they can learn -- a lot of our students can't afford to travel
2 to campuses, so if they want to attend a four-year college,
3 sometimes they have to just research it. This provides
4 everything in one place for a transfer student, not for all
5 students but for a students wanting to go from a community
6 college to that particular four-year.

7 Q. In connection with PTK Connect, do the four-year colleges
8 have the ability to communicate inside that portal with
9 students that are members of PTK?

10 A. They do. They have access to their data as part of their
11 sponsorship and membership in PTK Connect. The students have
12 more of an ability to communicate to them. They can hit the
13 love button, and that sends a message to that recruiter, hey,
14 this student is interested in your college. You need to reach
15 out.

16 But yeah, we didn't reinvent the social media experience
17 in there. They do have to e-mail each other. But they can get
18 the contact information of each person that they need.

19 Q. But, Dr. Tincher-Ladner, it is interactive in that the
20 students can contact these four-year institutions in one place
21 at one time to communicate their interest in that school?

22 A. And that is important, yes, and when you look at a
23 four-year university, only certain recruiters are dedicated to
24 the transfer students. So it is important that it gives them
25 just the right person they need to contact to get the

1 information they want to have.

2 Q. So they accuse -- Honor Society accuses you of selling
3 student data to these schools without the students' consent.

4 First of all, are you selling their data to them?

5 A. We are not selling student data. We have membership data.
6 When the student becomes a member, they release that data to
7 give to those colleges for their participation in Connect. And
8 we don't sell student data. We're a membership organization.
9 Colleges have students. We have members.

10 Q. Do students value this program?

11 A. They do very much.

12 Q. Do they use this program?

13 A. Yes, thousands and thousands of students log into Connect
14 every month.

15 Q. Has any student ever complained about having access to
16 this program?

17 A. No.

18 Q. So this concept of selling the data, do these four-year
19 schools pay money, in what form, maybe, to PTK for access?

20 A. The four-year colleges, if they want to partner with us,
21 they do pay a subscription fee to be able to communicate with
22 the students.

23 Q. Okay. But you are not selling the data to them?

24 A. No, we don't sell data.

25 Q. So -- and even if it was a sale, which it is not, but even

1 if it were, like they have alleged, do the students consent to
2 participation in the program when they join PTK?

3 A. Yes. It is such an important part of what we do. The
4 transfer function is really -- we have a lot more than this.
5 We teach them courses on how to transfer. This is just a part
6 of their experience with learning how to transfer from a
7 two-year to a four-year.

8 What was your question? I'm sorry.

9 Q. No, you answered it. With respect to this web page we are
10 looking at here, Exhibit 3, over on the right-hand side and
11 continued on the next page are it looks like little blue
12 banners or blue tabs. Do you know what those are?

13 A. It says at the top that they are tags for this page.

14 Q. Are you -- do you have knowledge in your job as to what
15 tags are in connection with websites?

16 A. Yes. I mean, I have worked with websites throughout my
17 career. I mean, the most important tag is the title. As I
18 mentioned previously, these additional tags help users find
19 information on your website about a particular topic.

20 Q. So that -- just so I'm understanding correctly, these tags
21 work with Google and the search algorithm?

22 A. Potentially they could. And when it is published, they
23 can see the first few tags. Like, it would say, here is the
24 title, it's "Under abuse," that being the first tag here.

25 Q. These colleges that are out to the right, are they, for

1 the most part, four-year institutions or two-year institutions?

2 A. Most of these colleges listed are four-year colleges.

3 Q. And those are the colleges that would be interacting
4 potentially or actually on the PTK Connect program?

5 A. Absolutely, yes.

6 Q. So is it significant to you that this web page that talks
7 about data privacy and allege deceptive activities by PTK, that
8 that page is being tagged with those four-year colleges?

9 A. It bothers me a lot.

10 Q. And can you tell what the intent is there with respect to
11 that?

12 A. I think the intent is to make sure that the internet knows
13 that if you want to learn anything about California -- sorry,
14 my eyesight --

15 Q. California Lutheran University or Arizona State
16 University --

17 A. Yes, and if you want to learn about them, you are going to
18 end up having to read this.

19 Q. It is going to come up in a search result?

20 A. Yes.

21 Q. So when you look at the bottom of the page, there are two
22 related articles. Do you see that? One is, "Is Phi Theta
23 Kappa Worth It," and the other one is "Phi Theta Kappa lawsuit,
24 PTK deceptive practices and attempted monopoly." Do you see
25 those two?

1 A. Yes.

2 Q. So is that the way these websites work is that they offer
3 other links so people, when they get done reading this article,
4 can go look at other websites?

5 A. At the bottom of each one of these experiences on their
6 website, you have this ability to move to the next article, the
7 previous and the next above that, but it also published other
8 articles below that that -- so they can advertise the reader to
9 even explore further their inflammatory work here.

10 Q. So if we were to click on "Phi Theta Kappa lawsuit, PTK
11 deceptive practices and attempted monopoly" link, you would go
12 to Exhibit 4.

13 **MR. POLAK:** Judge, I would turn your attention to
14 Exhibit 4, as well as you, Dr. Tincher-Ladner.

15 **BY MR. POLAK:**

16 Q. And we see another article that is talking about -- this
17 one is dated May 17, 2024, "Phi Theta Kappa lawsuit, PTK
18 deceptive practices and attempted monopoly." And it says at
19 the beginning of the article, "In a bold move to defend
20 students, parents, and the educational community, a lawsuit was
21 filed against Phi Theta Kappa and its CEO, Lynn
22 Tincher-Ladner." Is that true, that they filed a lawsuit
23 against you?

24 A. No, we filed a lawsuit against them in April of 2022,
25 and --

1 Q. Did they mention that lawsuit that you filed against them?

2 A. No.

3 Q. The Honor Society Foundation and a lot of its articles
4 claims that it is doing a public service, right?

5 A. Yeah.

6 Q. Do they make any reference at all in the voice of public
7 service to the claims that PTK has alleged against Honor
8 Society?

9 A. No.

10 Q. That is completely absent from any of these five thousand
11 articles, isn't it?

12 A. You don't see it in any of them.

13 Q. It goes on to say -- it talks about the allegations in the
14 lawsuit. You go on to the next page, you see again statements
15 about the allegations against Phi Theta Kappa, again, talking
16 about this false top ten percent claim, misleading scholarship
17 claims. It goes on to talk about monopolistic conduct and
18 suppression of competition. Do you see all of that here?

19 A. Yes.

20 Q. Is any of that worded in a voice that is anything other
21 than one-sided?

22 A. It is completely one-sided and false.

23 Q. So let's look at, underneath the --

24 **MR. POLAK:** This is on page 2, Your Honor, the
25 allegations against Phi Theta Kappa.

1 **BY MR. POLAK:**

2 Q. Let's go down after the bolded three claims that are
3 there. We see a sentence that starts with, "These deceptive
4 tactics." Do you see that?

5 A. Yes.

6 Q. I will read it for the Court. "These deceptive tactics,
7 the lawsuit claims, have enabled PTK to misappropriate
8 significant funds from students by exploiting their trust and
9 aspirations." Has PTK misappropriated any funds?

10 A. No.

11 Q. Does anyone audit PTK's financials?

12 A. Yes, we have a firm that audits Phi Theta Kappa every
13 year. And to my knowledge, and I've looked through all of the
14 audits that are available to me, we have never had an audit
15 that was -- had any kind of question. They were all clean
16 audits. And it is their job to find anything like that, and
17 it's absolutely not true.

18 Q. Has anyone in any one of these audits ever found a
19 misappropriation of funds that you're aware of?

20 A. Never.

21 Q. Do you audit chapter financials?

22 A. No. The chapters themselves fall within the college's
23 student activities budgets, and all of that happens at the
24 college. We do not audit chapter financials. We audit Phi
25 Theta Kappa, the foundation, but we also audit our 28 regions,

1 so we have -- we have regional accounts, and they come under
2 our audit. So we do audit everything but the chapters.

3 Q. So the chapter funds really are state funds?

4 A. Yeah, the chapter funds, because they are held at the
5 institution, they are not PTK funds. They are college funds.

6 Q. Okay. When we go down into the section about monopolistic
7 conduct and suppression of competition, we see here a quote
8 from a person named Michael Calvert. Do you know who Michael
9 Calvert is?

10 A. I do.

11 Q. Does he work for Honor Society?

12 A. He is the vice-president of marketing for Honor Society.

13 Q. But this is a quote given for the Honor Society
14 Foundation, right?

15 A. Yes, I just don't really -- I can't really tell who works
16 for who over there, but he is listed on his LinkedIn as the VP
17 for marketing for Honor Society.

18 Q. Have you recently learned anything about Mr. Calvert?

19 A. Yes, I have.

20 Q. What is it that you have learned?

21 A. In the last few weeks, we learned that we have a member
22 who goes to college in New Jersey, but his address is Michael
23 Calvert's home address. And when the student joined Phi Theta
24 Kappa, a credit card with Michael Calvert's address was used to
25 join and -- but not his name. It was the correct name. So I

1 don't know what's going on, but Michael Calvert appears to be a
2 member or has somehow acquired some student information.

3 Q. Let's break that down for the Court so the Court
4 understands. Someone in a student name -- let's back up. You
5 first learned about this because of what?

6 A. So, about two weeks ago, they produced several thousand
7 pages of discovery to Phi Theta Kappa, and the lawyers on your
8 team were going through it, and they happened to notice that a
9 student had produced a lot of different screen shots and some
10 information --

11 Q. Screen shots of what?

12 A. I haven't been able to see the actual -- I'm not allowed
13 to look at the discovery, so I don't know. But this is just
14 what Rachel told me on the phone.

15 Q. Okay. So there were screen shots of PTK's website?

16 A. Right, or different things.

17 Q. That's what you understand?

18 A. That's what I understand, information about us.

19 Q. And the screen shots were taken by someone who was not
20 named Michael Calvert?

21 A. Right. So she asked me --

22 Q. It was an actual student?

23 A. Yeah, it was a student's name, and she said, tell me about
24 the student. So I pulled up the student's record in the
25 database, and nothing looked out of the ordinary. The student

1 had joined in March of this year, but what did look like out of
2 the ordinary is the student had joined in March, but the
3 address was in Missouri, and the address sits in the middle of
4 the screen. And so, you know, not that students don't change
5 addresses, but it is just funny to have an address go from New
6 Jersey to Missouri in just a month's time frame.

7 **THE COURT:** In just a what time frame?

8 **THE WITNESS:** A month.

9 **BY MR. POLAK:**

10 Q. So you then went or someone went and compared the address
11 in Missouri to what, to Mr. Calvert's address?

12 A. So I told Rachel, the lawyer on your team, that this
13 student applied for a scholarship, they bought a piece of
14 regalia, they have gone into PTK Connect. They seem to be
15 doing all the things we want members to do. The only thing I
16 think that's weird about the student is the address is in
17 Missouri. And she is the one that determined this was Michael
18 Calvert's address. I did not do that.

19 Q. So what conclusion do you draw from this series of events?
20 Are you telling this Court that Michael Calvert hijacked an
21 actual student's account in order to access your proprietary
22 information?

23 A. Yes. To join PTK, you have to have the invitation, but
24 you also have to have a pass code. So I don't know how Michael
25 Calvert got this information, but it does appear as though

1 Michael Calvert is pretending to be a student from New Jersey.

2 Q. Let's look at Exhibit 7. I'm just going to kind of go
3 through some of these websites for the Court. I know the Court
4 at the outset said it hadn't looked at quite everything yet, so
5 I'm just going to flag some of these quickly for you.

6 This is an article, but this is on the HonorSociety.Org
7 website. So this is not the Foundation. This is actually the
8 Honor Society for-profit organization. And it is titled, "Phi
9 Theta Kappa legal issues. What students and educators need to
10 know." Right? That's the title?

11 A. Yes.

12 Q. Again, we see students and educators being targeted in the
13 title, right?

14 A. Yes.

15 Q. And then it goes through and talks about the very same
16 thing, the top ten percent claim, the scholarships, the
17 anti-competitive activities we have already talked about.

18 On the second page, there is a special section, and it's
19 called "Impact on students. If these allegations are true,
20 PTK's practices could have misled many students." See that?

21 A. Yes.

22 Q. And then underneath that, "Educational institutions'
23 perspective." It writes, "Educational institutions that
24 partner with PTK might need to reassess their affiliations and
25 ensure they are not inadvertently supporting misleading

1 practices." Do you see that?

2 A. Yes.

3 Q. Then "Broader educational implications: This lawsuit
4 against PTK serves as a wake-up call for all honor societies
5 and organizations." Let's look at Exhibit 8.

6 **MR. POLAK:** Are we looking to take a break, Your
7 Honor?

8 **THE COURT:** Yes. This would be an appropriate time.
9 I was about to let you do this exhibit, but we are going to go
10 through a few of them. So we will take a 15-minute break.
11 Dr. Ladner, you may step down. We will recess for 15 minutes.

12 **(RECESS TAKEN AT 10:31 A.M. UNTIL 10:50 A.M.)**

13 **MR. NEWMAN:** Your Honor, should the Court impose any
14 time limits so we can make sure we finish today?

15 **THE COURT:** Oh, I hope -- I hope we finish today. If
16 not, we will pick up wherever we don't, but I hope we finish
17 today. When I say today, I don't mean beyond 6:00 either.

18 **MR. POLAK:** It's a lot of material to go through,
19 Your Honor, and I appreciate your patience. It's a lot of
20 websites that we have to go through.

21 **THE COURT:** Okay. I understand. But as I explained
22 to the parties the other day, if we -- I do hope we will finish
23 today. And I think I told the parties, you know, about my
24 schedule for the future. And, you know, if things change in
25 that regard, I will let the parties know.

1 In the three-defendant criminal case that I have, one of
2 the defendants has announced that he will plead guilty, so that
3 probably means that that trial, assuming it goes forward, will
4 not last a whole month now.

5 **(OFF-RECORD)**

6 **THE COURT:** You may proceed at any point, Mr. Polak.

7 **BY MR. POLAK:**

8 Q. We were talking about Exhibit 8. Do you have that open,
9 Dr. Tincher-Ladner?

10 A. Yes.

11 Q. And this is a little different than the articles we were
12 looking at before because this one is from the Honor Society
13 website, right?

14 A. Yes.

15 Q. This is not the Honor Society Foundation. And this one is
16 titled, "Phi Theta Kappa embezzlement: A deep dive into the
17 allegations." Do you recall whether this embezzlement issue
18 was also a part of the survey that the Court enjoined back in
19 March?

20 A. Yes.

21 Q. And we see it here again. Is this article only about the
22 claimed embezzlement or something else?

23 A. It's about more.

24 Q. What are the other issues that it attempts to -- just
25 state very generally. We see there "deceptive advertising

1 practices" at the bottom. Is that what you are referring to?

2 A. Yes.

3 Q. So we see underneath that, "Key issues." It's the same
4 issues we have been talking about already related to the
5 scholarships and those things. But then we go on and we see
6 the same other types of language, "Impact on PTK and its
7 members." Do you see that?

8 A. Yes.

9 Q. And they wrote on this website, "The combined impact of
10 the embezzlement and deceptive advertising allegations has
11 significant implications for PTK's reputation and its members."
12 Right?

13 A. Yes.

14 Q. So they are trying to marry the embezzlement with these
15 other deceptive allegations?

16 A. Yes.

17 Q. Let's look at the first paragraph back on the first page.
18 It reads, "Phi Theta Kappa, the 'prestigious' honor society for
19 community college students, finds itself embroiled in
20 controversy following the arrest of a former advisor on charges
21 of embezzlement."

22 Now, first of all -- well, it goes on to say, "This
23 incident, coupled with longstanding allegations of deceptive
24 advertising practices, raises serious concerns about the
25 integrity and oversight within PTK."

1 First of all, have these allegations been longstanding?

2 A. No.

3 Q. They have only been alleged since April, right?

4 A. Right.

5 Q. They go on to discuss the impact on the members. We
6 talked about that. But let's talk about this PTK advisor
7 issue. You told the Court earlier that you don't control the
8 PTK advisors, right?

9 A. Right.

10 Q. These are faculty or staff from the colleges that are
11 hired by the colleges?

12 A. Yes.

13 Q. You also told the Court about how the money in the
14 chapters is not controlled or audited by PTK.

15 A. Correct.

16 Q. It is controlled and audited by the state?

17 A. Yes.

18 Q. Now, you were asked questions at your deposition back in
19 February about those very same issues, weren't you?

20 A. I was.

21 Q. Was Mr. Moradian sitting in the deposition room when you
22 were deposed?

23 A. Yes.

24 Q. And did he hear you talk truthfully about the relationship
25 between the advisors and PTK?

1 A. He did.

2 Q. So --

3 **THE COURT:** Hold on for a second. I presume the
4 deposition was February of 2024?

5 **MR. POLAK:** Correct. Thank you, Your Honor.

6 **BY MR. POLAK:**

7 Q. So just a few months before this website comes out making
8 these allegations, suggesting a connection between this advisor
9 embezzling funds and some lack of oversight by PTK, you had
10 previously told him that none of that was connected?

11 A. I did.

12 Q. So they just ignored your testimony?

13 A. They did.

14 Q. Was this former advisor even a PTK advisor when she got
15 arrested?

16 A. She was not.

17 Q. Were student funds actually taken by her?

18 A. No.

19 Q. So the association in this article that the advisor was
20 the responsibility of PTK, is that true or false?

21 A. That is false.

22 Q. That the money was PTK's student member funds, was that
23 true or false?

24 A. False.

25 Q. You can put that document to the side. Are you familiar

1 with Honor Society's, quote/unquote, justice center?

2 A. I am.

3 Q. Turn your attention to Exhibit 9. This is the home page
4 for Honor Society's website as it existed on June 14th of this
5 month.

6 **MR. POLAK:** And, Judge, we know that it was
7 June 14th, just so you know, because on the very first -- well,
8 the first real substantive page, you will see a document that
9 says Page Vault at the top, and this is a software that our law
10 firm uses to capture on-screen data from websites. And it
11 will, in essence, time and date stamp the collection of that so
12 that it is authenticated. This is a software that has been
13 regularly accepted by courts. That way you know what this --
14 because websites change. Right? They are constantly being
15 updated. They are constantly changing. This allows us to know
16 when and how that website was captured.

17 **THE COURT:** By a particular date and time?

18 **MR. POLAK:** By a particular date and time. That is
19 correct, Your Honor.

20 **BY MR. POLAK:**

21 Q. Before we get to the point that I want to ask you about,
22 the justice center, if we were to look on the very first page
23 of the website capture, over to the left it says, "Honor
24 Society is built for everyone with a goal." Do you see that?
25 And then underneath that it has some text, but it says here,

1 "We are also the largest based on web traffic." Are they
2 claiming they are the largest honor society based on the number
3 of people that come and visit their website?

4 A. Yes.

5 **MR. NEWMAN:** Objection, question calls for
6 speculation.

7 **THE COURT:** Objection sustained. Let me -- well,
8 where is it?

9 **MR. POLAK:** Sure. Your Honor, if you were to look at
10 this page right here --

11 **THE COURT:** I'm looking.

12 **MR. POLAK:** It's right here inside the smaller text,
13 and it says, "We are also the largest based on web traffic."

14 **MR. NEWMAN:** The document speaks for itself. It is
15 speculation, and that question can be asked to Mr. Moradian --

16 **THE COURT:** No, that's fine. Your objection is
17 sustained. But it is here.

18 **MR. POLAK:** It says what it says. And I guess if
19 they want to dispute that they are the largest based on web
20 traffic from their own advertisement, they can do that with Mr.
21 Moradian.

22 **BY MR. POLAK:**

23 Q. So we see that there. Do you draw a conclusion about --
24 you have got 5,000 websites, you have got the social media, all
25 of these things. When you read that on there, what conclusion

1 do you personally draw about the significance of their claim
2 that they are the largest by web traffic?

3 A. With the information about the lawsuit and links to
4 various articles on their home page, it really worries me that
5 they send invitations to every four-year college student, every
6 two-year college student, every high school student, from what
7 I understand. So everyone in higher education and in post
8 secondary education possibly is going to this website, or is
9 being invited at some point to go here, and they can see this
10 information. So it's worrisome.

11 Q. Let's go to the very last page. If you were to be
12 scrolling on a website and you were to scroll all the way to
13 the bottom, this is where you would come to, right?

14 A. Yes.

15 Q. And we see here a number of different links or sections,
16 and the upper left-hand corner talks about scholarships and
17 grants, with a number of different links. But I want to turn
18 your attention to the bottom row, second from the left. It's
19 called Justice Center. I asked you before if you were aware of
20 Justice Center. Is that what you were referring to?

21 A. Yes, this is the Justice Center.

22 Q. Okay. And underneath that, there are some links. One is
23 titled, "Phi Theta Kappa Lawsuit Center." Another is called
24 "PTK lawsuit claim." And then another one is the "PTK news
25 release." Do you see those?

1 A. Yes.

2 Q. Let's go to Exhibit 14. This is a fairly thick exhibit.
3 It's got a number of different Page Vault captures here, but is
4 it your understanding that if you click on those links there in
5 the Justice Center, that it will take you to these pages?

6 A. Yes.

7 Q. So this one is entitled, if you look in the upper
8 left-hand corner of this page, it says, "Honor Society Help
9 Center." This is from -- we are still on the Honor Society
10 website, right?

11 A. Yes.

12 Q. And this says, "Phi Theta Kappa lawsuit. Welcome to the
13 FAQ section dedicated to the Phi Theta Kappa lawsuit." And it
14 has some other language there, but do you see where I'm talking
15 about?

16 A. Yes.

17 Q. Do you know what the term FAQ means?

18 A. Frequently asked question.

19 Q. So when you see an FAQ page, frequently asked questions,
20 do you draw a conclusion about whether those are questions that
21 are actually frequently asked?

22 A. Yes, that's what it means. These questions have been
23 asked numerous times.

24 Q. Okay. And we see here a number of links at the bottom,
25 starting with "Overview of the lawsuit, specific allegations."

1 Down at the bottom of the first page, we see, "Impact on
2 community college students, faculty, staff." Do you see that?

3 A. Yes.

4 Q. And then on the second page, you see even more categories
5 of links. So let's look at some of these. Under "Overview of
6 the lawsuit," we see a web link, that's a web page you can go
7 to that titled, "What impact could the lawsuit have on Phi
8 Theta Kappa members?" So they are telling -- do you draw a
9 conclusion about this being a FAQ, a frequently asked question
10 in that question?

11 A. Yes.

12 Q. What is your conclusion?

13 A. They are making certain that members, potential members,
14 students in particular, are aware of things that might impact
15 them, and they have a lot of students probably being drawn to
16 this information because it is their high traffic area.

17 Q. So let's look at the second column there, still under
18 "Overview of the lawsuit." The very first one says, "What
19 steps should students take if they feel misled by Phi Theta
20 Kappa?" Right?

21 A. Yes.

22 Q. Is that a frequently asked question of your organization
23 prior to this distribution of 5,000 websites and material that
24 they put online?

25 A. No.

1 Q. Then there are some other ones under "Specific
2 allegations." Let's look at a couple of those. On the
3 right-hand side of the column, the first two, "What impact
4 could these allegations have on current and prospective
5 members?" And you click on that and there will be a whole
6 other article, right?

7 A. Yes.

8 Q. Answering that question. Underneath it, "Who is Lynn
9 Tincher-Ladner, and what is her role in the allegations?"
10 Right?

11 A. Yes.

12 Q. In your press release that your organization issued, did
13 you specifically call out the CEO, Michael Moradian?

14 A. No, we never listed his name.

15 Q. Have you ever issued any formal public statements on
16 websites or whatever that went after Mr. Moradian?

17 A. Never.

18 Q. Yet he is doing that to you?

19 A. A lot.

20 Q. We have a whole section below that called "Impact on
21 Community College Students, Faculty, and Staff." You look on
22 the very first one: "What can educational institutions do to
23 support affected students during this lawsuit?" And you can
24 click on that link, and it will take you to a page that answers
25 that question. Right?

1 A. Yes.

2 Q. Has any educational institution come to you and said, how
3 am I supposed to support students about this prior to this
4 online avalanche of information?

5 A. No.

6 Q. Look over to the right. There are some other links there,
7 like, "How does the lawsuit impact educational institutions?"
8 Do you see that?

9 A. Yes.

10 Q. Then on the next page, there's more call to action
11 questions. "Impact on community college students, faculty, and
12 staff." You look at the upper right-hand column, there's a web
13 page you can go visit that answers the question. "What role do
14 faculty and staff have in addressing the allegations against
15 PTK?"

16 We have seen multiple links on this page that all get at
17 the issue of your relationship with your students, right?

18 A. Yes.

19 Q. And we have seen multiple web links here that get at the
20 issue of your relationship with colleges?

21 A. Yes.

22 Q. And if we were to add up all of these links, there's how
23 many? What, 35, 36?

24 A. 36.

25 Q. So when we looked at the Justice Center links at the

1 bottom of the page, and there were only three, does that really
2 give a full representation of the number of web pages that they
3 have dedicated to attacking your organization?

4 A. No. It's a lot.

5 Q. It's a lot more than that, isn't it?

6 A. Yes.

7 Q. And behind that, we see all of the links -- we printed for
8 the Court all of the data that goes through -- if you were to
9 hit these links, I've printed for the Court in these other
10 pages in Exhibit 14 the content of each of those pages. And
11 I'm not going to go through all of those for the Court. I will
12 leave those to the Court to review on its own. But I wanted to
13 flag that for you so you know that information is there. And
14 I'll tell you that if you were to review it, you would find a
15 lot of the same, we think, deceptive and misleading
16 characterizations in there. You can put that one to the side
17 now.

18 There is an entire other website that was created by Honor
19 Society that is called PTKlawsuit.com. Is that right?

20 A. Yes.

21 Q. Have you visited that website?

22 A. I have.

23 Q. Does it contain the same information that we have been
24 discussing?

25 A. Yes.

1 Q. Do you find it to be true or untrue in terms of the
2 information it contains?

3 A. Untrue.

4 Q. There is a companion lawsuit that they also created called
5 PTKlawsuit.org. Have you gone to that one?

6 A. Yes.

7 Q. Does it contain the same information as PTKlawsuit.com?

8 A. It does.

9 Q. Does the .org, is it commonly used for certain types of
10 companies?

11 A. The general public I think sees .org and they think
12 nonprofit.

13 **MR. NEWMAN:** Objection. The question calls for
14 speculation.

15 **THE COURT:** Objection overruled.

16 **MR. NEWMAN:** The witness lacks foundation to answer
17 that question.

18 **THE COURT:** Rephrase your question. Objection
19 sustained.

20 **BY MR. POLAK:**

21 Q. So your PTK is a nonprofit?

22 A. Um-hm.

23 Q. Is that right?

24 A. Right.

25 Q. Do you have a .org?

1 A. Yes.

2 Q. And are you aware of other nonprofits using .org?

3 A. Yes.

4 Q. You have talked with other people in your industry about
5 the use of .org?

6 A. Correct.

7 Q. You have gained an understanding of what the general
8 understanding and acceptance of the use of .org is?

9 A. Yes.

10 Q. So I will go back to my original question, then. Do you
11 draw any conclusions about their use of .org in connection with
12 PTKlawsuit.org?

13 A. I have never seen a nonprofit use a .com, so -- you know,
14 I've seen for profits use .org, but it's just another way for
15 them to find it if they are putting in the .org. And it also
16 is very close to our web URL, which is just PTK.org.

17 Q. And it uses the same colors that you have, blue and gold,
18 on those websites too, right?

19 A. Yes.

20 Q. So, again, the confusion you were originally worried about
21 with Honor Society, somebody could go on these websites and
22 think that you were actually the promoter of these websites?

23 A. Yes, that is one of the worries.

24 Q. You mentioned previously that you were aware of not only
25 these websites but also the use of social media by Honor

1 Society to make these statements, so I want to show you some of
2 these documents and show the Court some of these documents. So
3 let's look at Exhibit 15. This is a screen --

4 **THE COURT:** I'm sorry. Let me ask a question. The
5 PTK.org, is that in one of these documents, or is it behind --
6 if you click on something --

7 **MR. POLAK:** I think you have to click on it.

8 **THE COURT:** Okay. It's not written here on this
9 page.

10 **MR. POLAK:** I don't believe it is in one of the
11 exhibits, is that right, the PTKlawsuit.org, or is it?

12 **MR. ETIENNE:** Not .org but .com.

13 **MR. POLAK:** Which exhibit is that?

14 **THE COURT:** That's fine.

15 **MR. POLAK:** It is in the record, but we do not have
16 the PTKlawsuit.org in the record, but we have referred to it on
17 the stand. And I think she said that the content was basically
18 the same as the PTKlawsuit.com. The PTKlawsuit.com website is
19 captured, I'm told, in Exhibit 6.

20 **THE COURT:** But if I were to click on some of this
21 stuff that's in Exhibit 14, it would take me to a PTK.org? Is
22 that the testimony?

23 **MR. POLAK:** That is correct.

24 **THE COURT:** Okay. All right.

25 **MR. POLAK:** Well, on 15 -- not necessarily, no. But

1 if you go to -- if you look at Exhibit 6, this is where it goes
2 to -- if you type into your, let's say, Explorer or Safari,
3 browser, whatever it is, and if you type in www.PTKlawsuit.com,
4 it will take you to, I believe, a web page maintained by Honor
5 Society that is at HonorSociety.org. So it is a jump site, if
6 you will. That's what they call it. But that's the thing is
7 that you type in there, they advertise that link, and it takes
8 you to the Honor Society website, which is found at Exhibit 6.
9 And we have the content there, and it's got a copy of the
10 lawsuit on there in full text, but it also has a bunch of
11 language editorializing about their efforts.

12 **THE COURT:** Okay. That is fine. Thank you.

13 **BY MR. POLAK:**

14 Q. So we are looking at Exhibit 15. Do you have it there in
15 front of you?

16 A. Yes.

17 Q. Okay. So is this an example of the social media efforts
18 of Honor Society that you saw?

19 A. Yes.

20 Q. What is this?

21 A. This is the PTK lawsuit created as an account on Twitter,
22 which is X now. But this is their Twitter account for just
23 that part.

24 Q. So Twitter is also known as X these days?

25 A. Yes.

1 Q. And this is -- is this a popular social media platform?

2 A. I think Twitter has probably got more users than any other
3 social media platform in the world. X.

4 Q. And we can't see it on this page, but if we were to look
5 at it, it has in red "lawsuit," and underneath it, it makes
6 reference to Strayer University and this top 10 percent issue.
7 and then you see a logo that says "lawsuit" on it. Right?

8 A. Yes.

9 Q. And underneath, it says "PTK lawsuit." Can you tell from
10 this who is behind this page?

11 A. I'm assuming Honor Society is behind the page because --

12 Q. You are assuming, but would someone who isn't familiar
13 with these guys know that?

14 A. No.

15 Q. Okay. Because it doesn't make reference to that at the
16 top, right? Instead, it says, "Phi Theta Kappa sued for
17 alleged predatory conduct and deceptive advertising." And
18 above it it has a hashtag. Now, it does say, "This page is
19 proudly by @HonorSociety, not affiliated with PTK," but that is
20 in small print there, isn't it?

21 A. Yes.

22 Q. And when you look at what they have -- let's look at the
23 first posting that they made on -- because these are dated,
24 right? You can see the date out to the right of each post. So
25 it says, "PTK lawsuit, June 11th." And the very first post

1 says, "What impact" -- I'm sorry. Actually, this is the most
2 recent post. "What impact could the #PTKlawsuit have on
3 #PhiThetaKappa members?"

4 Now, the Court may not be familiar with the hashtag, so
5 let's talk about that here for a second. Can you explain to
6 the Court how Twitter uses hashtags and what those hashtags
7 represent?

8 A. Yes. A #PhiThetaKappa is something that we -- you can
9 follow Phi Theta Kappa channels on --

10 Q. When you say a Phi Theta Kappa channel, you mean that have
11 -- you guys are on Twitter, right?

12 A. Right.

13 Q. So you have a page that is on Twitter that is dedicated
14 just to PTK content?

15 A. Correct.

16 Q. And you have a hashtag there that is used to direct
17 traffic to yours and that other users can use that says
18 #PhiThetaKappa?

19 A. Yes. We use the @ symbol, @PhiThetaKappa, to send them
20 directly to our Twitter account, but #PhiThetaKappa is used by
21 people that are posting about Phi Theta Kappa because the
22 people following that hashtag, like myself, like 14,000 other
23 people, see that post because they are following the hashtag.

24 **THE COURT:** Right. I understand.

25 **MR. POLAK:** Thank you, Your Honor.

1 **BY MR. POLAK:**

2 Q. So is it significant to you that they have chosen to use
3 your trademarked name in the hashtag for this article that
4 says, "What impact could the lawsuit have on PTK members"?

5 A. Yes.

6 Q. Why is that significant to you?

7 A. Because the people following our channel will see this,
8 and they are just tricking you to go here by using our hashtag,
9 and it's our trademark name in the hashtag.

10 Q. And if they were to go and see that post and click on the
11 article that is linked to it, they would go and see one of
12 those articles that we have been talking about that contains
13 what you have identified as containing false, deceptive, and
14 misleading information?

15 A. Correct.

16 Q. How many followers does PTK have on social media and the
17 internet?

18 A. Probably about 30,000 across the channels. Twitter is 14,
19 I think, 14,000.

20 Q. So this one post using that one hashtag has the ability to
21 do what?

22 A. It has the potential for our 14,000 followers to see it.

23 Q. Have you seen other companies associated with Michael
24 Moradian use their social media on these topics that attack
25 PTK?

1 A. I have.

2 Q. Let's look at Exhibit 16. This is a web capture dated
3 July 1st of 2024 of an entity called CollegeBuddies feed. And
4 here it says CampusBuddy -- this is at the very top, to
5 describe the business of CampusBuddy. It says, "CampusBuddy
6 connects you with your campus, your classes, and your
7 classmates."

8 A. Yes.

9 Q. And then when we go to the last page here, we see the most
10 recent non-PTK related submission, and it's dated August 30,
11 2017. Do you see that?

12 A. Yes.

13 Q. It's an article with a reference to Michael Johnson, the
14 runner. Do you see that there on the last page?

15 A. Yes.

16 Q. So the next post above that is an article related to this
17 lawsuit, and it's dated May 8th of 2024. Do you see that?

18 A. Yes.

19 Q. So this CampusBuddy --

20 **THE COURT:** March 8th. Oh, I'm sorry. Is it
21 March 8th or May --

22 **MR. POLAK:** It is dark and it's hard to read, but I
23 believe it says May 8th. Yeah, it's -- well, regardless, it's
24 in May of 2024, March of 2024. I believe it is May, Your
25 Honor.

1 **THE COURT:** Okay.

2 **BY MR. POLAK:**

3 Q. But the point here, though, is, Dr. Tincher-Ladner, do you
4 see any posts made by the CampusBuddy company from August of
5 2017 to mid-2024?

6 A. No.

7 Q. And then suddenly it gets resurrected, and you see around
8 10 to 12 posts all about what it is that we are talking about
9 today?

10 A. Yes.

11 Q. Do these posts have anything to do with connecting
12 students with their campus, their classes or their classmates?

13 A. No.

14 Q. Who is it that you know or understand owns CampusBuddy?

15 A. Michael Moradian.

16 Q. When you see the other references to -- in the other
17 articles that we were looking at, we saw some references,
18 didn't we, that were, like, scrutiny has come upon PTK, or
19 there's widespread recognition of the deceptive advertising.
20 Do you remember those types of things we looked at?

21 A. Yes.

22 Q. So one of the points I think you made to the Court was
23 that those things made it seem like there were a lot of people
24 out there doing this, right?

25 A. Yes.

1 Q. But you said that the only person who's actually doing
2 this is that man sitting right there in that chair, Michael
3 Moradian?

4 A. Yes.

5 Q. Now, is this an example of what you were talking about as
6 well?

7 A. This is one example, yes.

8 Q. And he activated CampusBuddy, a company that is unrelated
9 to Honor Society, supposedly, to attack your organization, to
10 make it seem like there is this widespread attack?

11 A. Yes.

12 Q. Is there anything on this CampusBuddy website that makes
13 it seem or gives notice to anyone that CampusBuddy is owned by
14 Mr. Moradian?

15 A. No.

16 Q. Is there anything on this Twitter feed that gives notice
17 to anyone that this company is connected to Honor Society?

18 A. No.

19 Q. It only says -- well, this one doesn't even say it's not
20 connected with PTK, like the other one, right?

21 A. Right.

22 Q. So someone looking at this could draw whatever conclusion
23 they wanted to about the source?

24 A. Yes.

25 Q. But they wouldn't know that it's connected to the person

1 who is personally attacking you?

2 A. They wouldn't.

3 Q. Do you recall the part of the survey content that was
4 enjoined related to claims of sexual harassment?

5 A. Yes.

6 Q. Let's turn to Exhibit 17. So this is an article on Honor
7 Society's website entitled "Phi Theta Kappa, sexual harassment,
8 the stunning allegations revisited." And there's an image on
9 the top of this. Have you ever seen this photograph before?

10 A. Not until it was published on their website.

11 Q. So this looks like a photograph, doesn't it?

12 A. It looks like it.

13 Q. Are you aware of that photograph ever existing as you see
14 it there?

15 A. I'm not aware.

16 Q. Do you have a suspicion about this photograph?

17 A. I think it looks photoshopped.

18 Q. So the title is -- well, I'm sorry. Who is it that's in
19 that photoshopped -- well, allegedly photoshopped photograph?

20 A. I'm in it and Dr. Rod Risley is in it. R-I-S-L-E-Y.

21 Q. Was he the subject of these harassment allegations?

22 A. He was.

23 Q. Is there anything strange about this potentially
24 manipulated photo in your view?

25 A. I just -- he is behind me in an awkward position, and it

1 looks sexually suggestive, to me.

2 Q. He is in your personal space right there as this thing has
3 been created, isn't he?

4 A. Yes, we are sitting practically -- I'm in his lap almost.

5 Q. And the article, it is about sexual harassment.

6 A. Yes.

7 Q. Do you find this photograph, as it is being presented, to
8 be deceptive?

9 A. I do.

10 Q. When did these allegations of harassment arise?

11 A. Over ten years ago.

12 Q. Prior to these social media and website postings by Honor
13 Society, was the sexual harassment issue as pertaining to Dr.
14 Risley a matter of current concern? In other words, was it
15 currently a concern in 2021?

16 A. No.

17 Q. 2022?

18 A. No.

19 Q. 2023?

20 A. No.

21 Q. When the Court enjoined the use of the sexual harassment
22 allegations in the survey, did you think that issue was
23 resolved for this lawsuit?

24 A. I did.

25 Q. We also see references to things wholly unrelated to the

1 issue of sexual harassment here, right?

2 A. Yes.

3 Q. We see at the very bottom of this page, but continuing
4 onto the next page, a whole section on alleged deceptive
5 advertising practices. Do you see that?

6 A. Yes.

7 Q. Going back to Dr. Risley, were you even CEO when any of
8 this happened?

9 A. I was not.

10 Q. So if you were standing in front of Dr. Risley, you would
11 have been the chief information officer at the time, right?

12 A. Yes.

13 Q. Because you were the chief information officer for PTK,
14 not CEO, but the chief information officer when these
15 allegations first surfaced?

16 A. Yes.

17 Q. So going back to the deceptive advertising practices, we
18 go underneath this, "Questioning PTK's leadership." So this is
19 on a web page that they created with potentially a photoshopped
20 image and a section here talking about your leadership for an
21 event that occurred when you were not even an executive with
22 PTK, right?

23 A. Not the CEO, yes.

24 Q. So let's look at what it is that they wrote here. "The
25 leadership of PTK, including both the current and former CEOs

1 and the board of directors, must be held accountability for the
2 organization's culture and practice. The failure to address
3 these serious allegations adequately raises concerns about the
4 leadership's commitment to ethical standards and member
5 welfare." Now, again, this happened over ten years ago?

6 A. Yes.

7 Q. Who is the leadership that this article is questioning?

8 A. Mine.

9 Q. Is that an image of you on the photograph?

10 A. It is.

11 Q. Is your name all over this?

12 A. All over it.

13 Q. Let's look at Exhibit 21. So here on Exhibit 21 we see
14 yet another article that contains this potentially photoshopped
15 image. Do you see that?

16 A. Yes.

17 Q. This one actually uses your name in the title. "Unmasking
18 Lynn Tincher-Ladner. The allegations of false advertising at
19 PTK." Do you see that?

20 A. Yes, in the title.

21 Q. Have you seen the term "unmasking" on some of these other
22 articles as well?

23 A. Many times.

24 Q. In fact, I think there is one image of an article that was
25 AI generated, and it's a woman, you can't see her face, but it

1 is called "Unmasking the Truth," and it's a woman taking --
2 holding a mask in front of her face, right?

3 A. Yes.

4 Q. Did you take it to be a woman that looks kind of like you?

5 A. I do.

6 Q. So when we see here -- this is on the Honor Society
7 website, right? This is not The Foundation. This is Honor
8 Society's website. Let's look at the text here and let's go to
9 the second sentence. "Recent allegations have surfaced
10 accusing PTK of false advertising and deceptive practices."

11 Not to beat a dead horse, but has anyone other than
12 Michael Moradian or Honor Society made these allegations of
13 deceptive activity?

14 A. No one.

15 Q. So do they say here in this article that they are the
16 source of the allegations?

17 A. No.

18 Q. There are other articles that were written about you as
19 well. Let's look at Exhibit 28.

20 **MR. POLAK:** We are not able to look at all of them,
21 Judge, and I don't intend to go look at -- we don't have that
22 amount of time. We would be here all next week looking at all
23 5,000 websites, but I do want to highlight a couple for you.
24 Exhibit 21 -- I'm sorry, Exhibit 28, this one is about -- we
25 see the image again, right, that we have been talking about,

1 this allegedly photoshopped image, and then above it, the title
2 is, "Lynn Tincher-Ladner's PTK compensation and salary review."

3 A. Yes.

4 Q. So this one is about your salary, and they provide
5 information below. What is your understanding of the gist of
6 what they are arguing here?

7 A. They are communicating to whomever, well, look at this,
8 what my salary is.

9 Q. And not just what your salary is, but they're making the
10 argument that you are overpaid, right?

11 A. Oh, yeah.

12 Q. And they compare you to one person or two people who are
13 with the ACHS, American College of Honor Societies, or
14 Association of Collegiate Honor Societies.

15 A. Right.

16 Q. So I'm going to ask you some questions about that. First
17 of all, can you tell the Court how your salary is determined?

18 A. Yes. Every January, I am evaluated by the Phi Theta Kappa
19 board of directors. I do a self-evaluation. They do an
20 evaluation. I leave the room. And the chief financial officer
21 works with the board to compare my salary to the appropriate
22 people that they wanted her to compare it to, and that's how
23 they determine my salary.

24 Q. You have been deposed. They had the opportunity to ask
25 you that question, how your salary was -- right?

1 A. Yes.

2 Q. All they did at that deposition was ask you what your
3 salary was?

4 A. Right.

5 Q. So they don't care, I guess, how it is that your salary is
6 calculated, but here in this article they are making
7 allegations that you don't earn the money that you are paid?

8 A. Right.

9 Q. That you are misappropriated -- well, that PTK is misusing
10 student funds because they overpay you?

11 A. That is what they are trying to say, yeah.

12 Q. Now, is ACHS a good comparison?

13 A. No.

14 Q. Why not?

15 A. ACHS, first of all, the president is really just a
16 volunteer from another organization. ACHS doesn't have a
17 convention with -- I mean, I could go on, but no, these are
18 improper comparisons.

19 Q. I want you to go on. I want you to explain to the Court
20 what it is that you do to earn the salary that you do.

21 A. Well --

22 Q. Do you travel a lot?

23 A. I travel about 120 days a year, and I'm away from my
24 family 120 days a year.

25 The board does several comparisons. If you notice, my

1 title is president and CEO. That was communicating out to the
2 world of community colleges that my salary would be calculated
3 in line with what college presidents are paid.

4 So we have a computer program called Payscale, and we go
5 into Payscale, and we pull the average reports of what college
6 presidents, community college presidents are paid, and that is
7 just one of the comparisons.

8 Q. You said that there was a convention that you put on?

9 A. Yes.

10 Q. How many students come to that convention every year?

11 A. They look at people who have events. Our event has
12 4,000 -- you know, after COVID, it went down a little bit. It
13 had its most, 5,000 people. So we are talking about an event
14 that you have thousands of students coming to. It's a lot of
15 work. And that is one of the metrics. They only look at
16 organizations that have -- as far as the nonprofit side, they
17 look at comparable organizations that are doing the level of
18 activity that Phi Theta Kappa is doing.

19 Q. Does ACHS put on an annual convention?

20 A. I don't know. They probably put on a meeting, but they
21 definitely don't have --

22 Q. Four thousand people?

23 A. -- four thousand trying to stay in different hotels, and
24 it's a crazy amount of work.

25 Q. And you are personally involved in the presentations at

1 that --

2 A. Absolutely. I am a keynote speaker. Plus, the safety and
3 security of 5,000 students in any city in this country is a lot
4 of stress for a little 60-member staff.

5 Q. How does the budget of PTK compare against ACHS, if you
6 know?

7 A. I don't know. That's another way they calculate it. They
8 do compare my salary to other nonprofit leaders, but they put
9 in the same budget we have. So I really seriously doubt ACHS
10 and the Tau Beta and the Alpha Chi and any executive director
11 in the city of Jackson has a budget that is the size of Phi
12 Theta Kappa's, and that's one of the things they look at when
13 they capture the ones that -- and we also compare my salary
14 nationally, not just here in Jackson, because most of my work
15 is not right here in Jackson just because we are headquartered
16 here.

17 Q. Is what you are saying that comparing PTK's salary for you
18 against other organizations that are local only to Jackson is
19 apples and oranges?

20 A. It's like apples and cucumbers.

21 Q. Exactly. So is it deceptive, what you are seeing here?

22 A. It is.

23 Q. Is it misleading?

24 A. It is.

25 Q. Let's look at Exhibit 29. Here again we see, yet again,

1 that allegedly photoshopped image. This one now is titled more
2 aggressively, "Lynn Tincher-Ladner, alleged, alleged,
3 misleading mastermind."

4 Do you get the sense that somebody may have told them that
5 so long as you put the word "alleged" in front of all of this,
6 that suddenly it is okay to defame you?

7 A. Well, they are not consistent about it, but they think
8 that that is helpful. I don't know.

9 Q. Does it change your view?

10 A. No, not at all.

11 Q. Because not everything we have looked at says alleged,
12 does it?

13 A. No.

14 Q. And even if it did say alleged, does it matter?

15 A. Not to the psychological way that people look at
16 information, no.

17 Q. So this contains a lot of the same information we have
18 already gone through, but it does have those same tags out to
19 the right-hand side, right, of all of those colleges?

20 A. Oh, yeah.

21 Q. And we haven't looked at those tags, but the Court will be
22 able to see that on all the other Honor Society web pages,
23 those tags exist. When we look at the bottom of that page,
24 there are two other articles, one of which we have already
25 looked at. The other one says, "Rod Risley's PTK CEO tenure

1 shadows over Phi Theta Kappa." If you were to click that link,
2 you could go to that page about Rod Risley as well, right?

3 A. Right.

4 Q. Let's go to Exhibit 33. Here we see again the
5 photoshopped image, or allegedly photoshopped image. The title
6 is, "Is Phi Theta Kappa ethical?" And we see a photo of you
7 with Rod Risley standing close.

8 A. Yes.

9 Q. So we are up to I think five or six websites that use the
10 same image and are talking only about you and personal things
11 to you?

12 A. Yes.

13 Q. And that also, I take it, contained false information?

14 A. All of it.

15 Q. Let's look at Exhibit 35. Now, we talked before about
16 College Budget, but we looked at the social media. Now when we
17 look here, we have an exhibit that was captured on June 13th of
18 2024. The article has a date of May 21st, 2024. But here
19 PTK -- I'm sorry, College Budget has an article called "Lynn
20 Tincher-Ladner and Phi Theta Kappa are sued for false
21 advertising. What you need to know."

22 And it goes on to say in the text, "In a significant
23 development to protect community college students, Honor
24 Society has filed a federal lawsuit against Lynn
25 Tincher-Ladner, CEO of Phi Theta Kappa. The lawsuit, initiated

1 in the Southern District of Mississippi, brings forward serious
2 allegations of deceptive practices and monopolistic behavior
3 under Tincher-Ladner's leadership. For students, parents and
4 educators, these claims warrant close attention."

5 Now, is there anything in this article, because I know you
6 have looked at it, that says anything about how College Budget
7 is owned by Michael Moradian?

8 A. It does not.

9 Q. Does it disclose at all the connection between College
10 Budget and Mr. Moradian?

11 A. No.

12 Q. What about the relationship between College Budget's
13 employees -- wasn't Mr. Asari, David Asari, we learned his name
14 last time, isn't he associated with College Budget?

15 A. In his deposition, he said he worked for College Budget --
16 no, CampusBuddy. Anyway, I don't know what he said.

17 Q. Does this thing, this article, disclose at all about the
18 relationship of co-employees between these organizations?

19 A. It does not.

20 Q. So, again, just to reinforce so everybody remembers, your
21 testimony before was that you were concerned that by having
22 articles like this and the other social media from these fake
23 third parties gave the impression that all of these people are
24 concerned about it?

25 A. Yes, it's not just impression. It's -- it's the way

1 search engines work when -- it's called back-linking. When you
2 start putting these articles on these various channels, it
3 tricks Google into thinking, wow, everyone is talking about
4 this, it must be super important. And that's how it navigates
5 the searches on PTK, on Lynn Tincher-Ladner, on our chapters
6 and two-year college partners. It pushes it way up in the
7 search engine because it's tricking the internet that these are
8 other people. It's not just one person.

9 Q. So we turn to the second page. It says, "Key allegations
10 against Lynn Tincher-Ladner," and it talks about false top ten
11 percent claims, questionable letters of recommendation,
12 misleading scholarship information, the same top ten percent
13 claims. We have already talked about whether those are true or
14 false. We don't need to go back over that. But they claim
15 that these are key allegations against you. So this article is
16 coming after you. How does that make you feel?

17 A. Not very good.

18 Q. Why?

19 A. Because I've been working in higher education for 35
20 years. I started out as a high school teacher at Gulfport High
21 School. And I've been working in public education and
22 nonprofits, and all of a sudden one person is saying that I'm
23 some criminal mastermind or something, and it's just not even
24 within the scope of the mission of Phi Theta Kappa for me to be
25 this person that they are portraying me as.

1 Q. I'm going to turn your attention to Exhibit 20. This is
2 another social media site called LinkedIn. Can you describe
3 for the Court what LinkedIn is as a platform? Generally, what
4 is the market that it tries to serve?

5 A. LinkedIn is for professionals. It's a professional
6 networking site. It's not supposed to have your opinions or
7 nonsense on it, but --

8 Q. Do you have a profile?

9 A. I do.

10 Q. And that's the way it works is people can put a personal
11 profile?

12 A. Yes.

13 Q. Now, companies can have profiles too, right?

14 A. Yes.

15 Q. Do PTK students, members, have profiles, even though they
16 are not yet professionals?

17 A. Yes. I mean, LinkedIn, according to the research, is one
18 of the fastest growing platforms for young people. They are
19 navigating to it because it can help them find jobs.

20 Q. Does PTK use LinkedIn to communicate its messaging?

21 A. Oh, yes.

22 Q. Is it a significant part of what you guys do?

23 A. Yes.

24 Q. I didn't ask this before, but is Twitter something that's
25 significant?

1 A. Yes, they all are. We use all the channels.

2 Q. Instagram, Twitter, LinkedIn, you use all of that social
3 media to get your message out?

4 A. We even use TikTok, yes.

5 Q. So at the same time they are putting all of this content
6 out that's negative about you, you are out there also trying to
7 do the mission of the nonprofit over those channels?

8 A. We are trying, yes.

9 Q. Let's look at this. This article that was put out was
10 captured on June 14th, 2024. It was posted on LinkedIn, and
11 it's titled, "Phi Theta Kappa, shocking allegations and
12 unmasking the truth." We had talked before about an image that
13 was AI generated of a woman holding a mask over it. Is this
14 the one you were referring to?

15 A. Yes.

16 Q. Do you have a view as to whether that was intended to look
17 like you?

18 A. It's an AI version of me, I guess.

19 Q. Maybe not a very complimentary photo or image, but still
20 it's --

21 A. I do dress like that, but yes.

22 Q. Now, you see the first line here is, "Phi Theta Kappa, the
23 self-proclaimed world's largest honor society for community
24 college students, is facing a firestorm of allegations that
25 could forever alter its reputation." What is your reaction

1 when you read that?

2 A. Just the 8,033 people that saw this above there is more
3 concerning, but it is just more of the same inflammatory
4 one-sided lies.

5 Q. Okay. Then it goes on to talk about the recent lawsuit
6 and the accusations, and it talks about the allegations. We
7 have already talked about those. But there are some blue words
8 here. Are those links that are embedded in the article that
9 you can click to and it will take you to more information
10 related to this article?

11 A. Yes.

12 Q. And those are not links that LinkedIn creates. Those guys
13 over at Honor Society --

14 A. Yeah, they back-link to his articles to make them more
15 valid.

16 Q. These are some of the 5,000 plus websites we have been
17 discussing, right?

18 A. Yes.

19 Q. So you turn the page and you look at the second page, and
20 we see more content directed towards driving fear in students
21 and colleges. One is titled, "The student impact: Misled and
22 disillusioned." Do you see that?

23 A. Yes.

24 Q. Have you seen any evidence of students being misled and
25 disillusioned about these allegations prior to the time that

1 they were being made?

2 A. No.

3 Q. So, in other words, prior to the second amended complaint
4 in April, did any students complain to you and say, I've been
5 misled, I'm disillusioned with PTK?

6 A. No.

7 Q. They go on to say here at the bottom of this, and this is
8 important, quote, the implications for their academic and
9 professional futures could be significant. What impact do you
10 think that is going to have on a 20-year-old kid?

11 A. A negative one.

12 Q. What impact do you think that is going to have on a parent
13 that's a professional that is researching PTK and comes across
14 this?

15 A. They are not going to join.

16 Q. There's another one here. "Educational institutions
17 reevaluating PTK." And it says, "Colleges and universities
18 that host PTK chapters" --

19 **THE COURT:** Slow down.

20 **MR. POLAK:** Thank you, Judge. I'm sorry. My tummy
21 is growling, so I'm trying to keep this thing moving.

22 **BY MR. POLAK:**

23 Q. "Colleges and universities that host PTK chapters may need
24 to reconsider."

25 A. Wow.

1 Q. So that's more of the same. So you may put that one to
2 the side.

3 You made reference before on how all of these articles
4 posted online can have an effect on Google. Did you conduct an
5 investigation into that?

6 A. Yes.

7 Q. What was it?

8 A. Well, I just tried Googling different things, not just Phi
9 Theta Kappa but my name, and then combining the searches with
10 Phi Theta Kappa and a college name, and every one of those
11 searches, Google thinks that this information is more important
12 than even the most current information about those places,
13 people and things.

14 Q. So let's look at Exhibit 46. And 46 is a search result of
15 the type that you are talking about, right?

16 A. Yes.

17 Q. And this is a search result that was populated on
18 July 2nd, 2024, and was captured using a screen shot, that same
19 software that we did. Can you describe for the Court what you
20 see -- well, first of all, what it is that you did in order
21 to -- well, what it is that was done in order to get this
22 search result?

23 A. Just put Southwest Mississippi Community College and Phi
24 Theta Kappa in the same Google search.

25 Q. Do you see that, that search from the top, at the very

1 top?

2 **MR. POLAK:** This is Exhibit 46, Your Honor.

3 **BY MR. POLAK:**

4 Q. You go to the very top of that, and there's a Google
5 search bar, and you can see the actual search terms that were
6 used, Phi Theta Kappa, Southwest Mississippi Community College,
7 right?

8 A. Right.

9 Q. So what else do you see here, Dr. Tincher-Ladner?

10 A. You get the website of the organization on the college,
11 and then you pick up their Facebook feed, but then after that,
12 boom, boom, boom, you are getting everything about the lawsuit
13 and their interpretation and editorial version of it, and then
14 below that is the Phi Theta Kappa things on our website.

15 Q. Okay. So let's break that down. These are a listing that
16 is created as a result of the Google algorithm when you type in
17 search terms, and the third, fourth, and fifth highest ranking
18 search results is Honor Society's website?

19 A. Yes.

20 Q. And not just their website but these pages that we are
21 talking about?

22 A. Warning, yes.

23 Q. So you have to go through all of that on the search
24 results before you actually come to PTK's website?

25 A. Right.

1 Q. So, first of all, why is that important to you?

2 A. It is very important that parents and students are able to
3 use the internet to research Phi Theta Kappa at their college.
4 And this takes that away from them. And when you've got Honor
5 Society's propaganda on CampusBuddy, you've got it on a
6 foundation, you've got it all throughout social media, you've
7 got the Honor Society page lawsuit center, you've got College
8 Budget -- and keep in mind, I'm on the home page, which makes
9 Google go, wow, this is so important that I need to show those
10 results.

11 So this is a search engine optimization technique that you
12 can use to try to get information out ahead of other things,
13 and competitors use it all the time for marketing strategies.
14 We don't, but he knows very much what he is doing, he knows
15 what he has done, and he has essentially hijacked the SEO for
16 Phi Theta Kappa, for our chapters at colleges, and my name, all
17 doing this same technique.

18 Q. Now, behind that in the next blue tabbed sheet, we see the
19 same search that you ran for Phi Theta Kappa, Hinds Utica
20 campus. Do you see the same results there that the websites
21 they created around -- that we are talking about, these 5,000
22 or so websites that are dedicated directly to campuses, where
23 that deceptive and misleading information you described before
24 is posted, you get to that before you ever get to PTK?

25 A. Yes.

1 Q. In fact, this one it is a little worse because you have to
2 scroll down to around the very last one on the search result.
3 You have to go all the way to the second page at the bottom
4 before you get to Phi Theta Kappa.

5 A. And this is particularly confusing for the members that --
6 we have a grant at Hinds Utica to pay for all the members' dues
7 and bring them to convention. And if the parents of those
8 students are seeing this at this particular college, which is
9 so important to us right now in working and coaching these
10 students, this is terrible.

11 Q. Okay. You can put that to the side. Thank you.

12 So we have discussed these various publications on the
13 internet. We have gone through not all of the 5,000 web pages,
14 but I think you have touched on quite a few of them. I would
15 now like to start to talk with you about what effect all of
16 this has had on you and PTK, and I want to start with you.
17 What effect has this had on you?

18 A. I hope no one has to ever go through this online attack on
19 your reputation, but, you know, normally this time of year,
20 over the last few months, I would have been invited to speak at
21 several graduation commencements in the United States at very
22 different places, and I've gotten invited to one, and by now, I
23 would have been invited to speak at faculty convocations in the
24 fall, and I've not been invited to do any of that.

25 And so between this activity and the FOIA and everything,

1 I'm very much being taken out of my role that I had previously
2 in working and doing my job outside of Jackson. And so it has
3 been difficult psychologically, but my daughter is, you know, a
4 school teacher here in the Jackson Public School District, and
5 I didn't say anything that's about them, but she comes to me
6 and she goes, "Mom, you're a criminal mastermind. What is
7 going on?" I'm just thankful my son hasn't found it. But at
8 work, I'm just really -- it's very difficult to do the work for
9 the students, and it's just been horrific on me psychologically
10 and professionally and personally. I'm just glad my
11 85-year-old parents haven't been able to use the internet to
12 find this stuff, but you can bet everyone that I know
13 professionally knows about it.

14 Q. So is it difficult for you to talk about that in front of
15 Michael Moradian when he is sitting right here and you know
16 he's the one that did this to you?

17 A. Yeah, I'm just -- you know, every day it's something new,
18 and I don't know what he is going to do next, if I can't get
19 some relief from my career, my 35-year career in higher
20 education.

21 Q. Do you have a fear that him sitting here listening to what
22 you said is somehow going to populate itself on another 5,000
23 websites?

24 A. Yes, I think he is probably thinking that he knows what
25 gets to me the most, based on my testimony, and I don't know

1 what he is going to do next.

2 Q. Are you concerned about how this is affecting PTK and its
3 reputation?

4 A. That's the most concerning part.

5 Q. What is your concern vis-a-vis the way in which PTK gets
6 its members?

7 A. Our members are first generation students, and they use
8 the internet. They don't all -- especially after the pandemic,
9 not everyone is really in classes on campus and can talk to
10 students, but the internet is being used more than ever to
11 research Phi Theta Kappa, I believe. And I feel like all of
12 this activity definitely is keeping students from joining, it's
13 taking away the opportunities that they have when they do join
14 and the great and amazing student success that our organization
15 provides.

16 And for the 4.3 million members that are already part of
17 Phi Theta Kappa, this completely invalidates them. Their
18 academic achievement means nothing now because of just one
19 person's online crusade to invalidate the work of those
20 students. And the colleges are just getting beaten up left and
21 right and getting pulled into this thing. With so many FOIA
22 requests, it is just glazing inappropriate.

23 Q. But in terms of the students, let's talk about what that
24 looks like for a student. If a student comes across these
25 5,000 websites that contains, as you've put it, false or

1 deceptive information, not the whole story, and they don't join
2 PTK because of that, what happens to that kid? What are they
3 losing out on?

4 A. They are losing out on the ability to have a community
5 around them. We have a 91-percent student success rate.

6 Q. Is that higher than everyone else?

7 A. I have never seen a study, and I've looked at them all, of
8 any group of students in four-year colleges, two-year colleges,
9 for profit, nonprofit, whatever you want to look at, we have
10 the absolute highest student success rates of students that are
11 members.

12 Q. So the harm that you are talking about is not just to you
13 personally, it's not just to PTK, but are you worried about the
14 harm to these students?

15 A. I am. If they don't join, they will never know if they
16 will get a scholarship to Mississippi State, Millsaps. I mean,
17 Jackson State has a full ride for our members. They might not
18 ever even know that if they don't join.

19 Q. Where are you presently in your membership cycle?

20 A. We're in our summer recruitment cycle. We are currently
21 recruiting about 120,000 different students across the United
22 States.

23 Q. What's going to happen in August, though?

24 A. In August --

25 Q. How does that change?

1 A. We start in the fall cycle with about 450,000 students.
2 That's who we were recruiting last fall. So in the fall, just
3 in a few weeks here, we are going to be trying to recruit
4 450,000 students.

5 Q. So if this Court is disinclined to grant the relief that
6 we are asking here, to have all of this stuff taken down, what
7 do you think is going to happen during your fall recruitment
8 cycle?

9 A. It will be ineffective. It will definitely fall, as it
10 has fallen this summer since this came out, all of it.

11 Q. Do colleges use PTK membership for their own recruitment?

12 A. Yeah, that is like -- aside from PTK and me personally and
13 the students, the two-year colleges in this state, they use PTK
14 to help recruit high school students to come. A lot of high
15 school students don't like to go to a community college because
16 they feel like they are not going to have friends, and so the
17 colleges, they go out there into the community and they say,
18 your kid is going to have good friends. They are going to be
19 with a group of students, especially a high-achieving high
20 school student.

21 So this has the potential to lower enrollments in the
22 state of Mississippi, because I know personally that these
23 colleges are using Phi Theta Kappa as a recruitment tool. You
24 can go to their websites and you can see that they are. And I
25 know they are because I know the presidents in this state, and

1 I was a part of one of the colleges here for a very long time.
2 This is a very harmful thing for a parent to Google Phi Theta
3 Kappa and see this, and they're like, My kid is not going
4 there. Well, if they can't afford to go to Mississippi State
5 or Ole Miss or Jackson State, or wherever they wanted to go,
6 they might not go to college at all.

7 Q. You have talked about your concerns. Have you seen any
8 indications that Honor Society is actually harming PTK's
9 business with what it is they have done?

10 A. Yes. I mean, from -- we have had students that are
11 calling up randomly since this started, I don't want to be a
12 member, I don't want any questions asked, I don't want to be a
13 member. And we have never had a volume of students rescinding
14 their -- they are not asking for their money back. They are
15 just saying, I don't want to be a member. They have been
16 members for years.

17 Q. And you have identified these people specifically in
18 your declaration --

19 A. I did. I listed the ones.

20 Q. And that was part of what it is that you asked the Court
21 to keep quiet?

22 A. Yes.

23 Q. And why is that?

24 A. Students don't like to have their name published anywhere,
25 especially in litigation. And it could just be more

1 inflammatory for everybody.

2 Q. But there were about two dozen students that have
3 contacted you in the last couple of months, here in the summer.
4 What conclusions do you draw about that in the fall?

5 A. I don't know what is going to happen. I think membership
6 will go down. Membership has been down about -- in January and
7 February, it was fine, and then come March, with the surveys
8 and now this, we are down in revenue, that I know of, about
9 \$80,000 in revenue.

10 Q. We talked before about PTK Connect, and how that's -- the
11 PTK Connect program is sponsored by a number of different
12 sources. Right? One of those are the colleges, the four-year
13 colleges that we talked about. There are also sponsorships of
14 that program by corporate sponsors, right?

15 A. Right.

16 Q. Now, do you track the four-year institutions, sponsorships
17 of that organization?

18 A. Yes.

19 Q. What have you seen?

20 A. We have had a decline, around 15-percent decline in
21 cancellations of participation in Connect, and we have never
22 had that. We have always grown that program. Four-year
23 colleges want our students.

24 Q. So that's suspicious to you?

25 A. Very suspicious. Especially -- you know, these are very

1 large institutions with plenty of reasons to be recruiting the
2 top students in the country.

3 Q. Has PTK experienced any decline in sales through its web
4 store in the last several months?

5 A. In the web store, we have had another decline since --
6 from March until now, at least a hundred thousand dollars in
7 less sales. And it's not that the sales of the store create
8 that much revenue for us, but what happens is a student doesn't
9 even buy a PTK T-shirt because they don't want to wear that. I
10 mean, the reason we sell things in the store is so our brand
11 will be out there.

12 Q. So if there is all this negative, false, deceptive
13 information floating around, are you saying that students
14 aren't going to feel proud to be PTK members anymore?

15 A. Not proud, they are canceling, they are not proud, and
16 they probably will not join. And I've never, in the years I've
17 been the CEO, had all three main revenue streams down at the
18 same time. And more importantly, what is going to happen in
19 the fall?

20 Q. Have you seen any increase in negative online reviews of
21 PTK?

22 A. Absolutely. It has been suspicious that since March,
23 April, and then really more in the last few weeks that I have
24 seen and had to deal with so many complaints on the internet.

25 Q. And are you aware that the community college survey that

1 the Court enjoined had a link in it to Trustpilot to leave a
2 review of PTK?

3 A. Yes.

4 Q. Do you see a connection there between these negative
5 reviews and that survey?

6 A. There was an escalation in visits to Trustpilot. We never
7 used Trustpilot as a way to evaluate ourselves, but they have
8 sent students to Trustpilot after putting them through their
9 survey, and if you look at the dates on their submission, you
10 can definitely see the decline in their assessment of us.

11 Q. And it's not like the survey and these articles are
12 completely separate. Right? The same subjects that were a
13 part of the survey, the alleged sexual harassment, the
14 misappropriation of funds, the embezzlement, this top ten
15 percent issue, the only official honor society for community
16 college, those were all part of the survey.

17 A. Right.

18 Q. And you also see those all being a part of this 5,000-page
19 online campaign?

20 A. That and much more.

21 Q. So is it a stretch for you to conclude that if people were
22 influenced by the survey, 5,000 articles of this is going to
23 also have a similar effect?

24 A. Now that every single Google search around anything that
25 has to do with our company has been impacted by their

1 activities, I don't have any idea what is going to happen. If
2 it's anything like what has happened in the last few months,
3 it's going to be pretty terrible.

4 Q. What about the Better Business Bureau? People can go on
5 the BBB and leave reviews, right?

6 A. They can leave both complaints and reviews, yes.

7 Q. Have you seen an uptick in complaints about PTK on --

8 A. They do not --

9 **COURT REPORTER:** Wait, wait. I'm not getting the end
10 of his questions.

11 **THE WITNESS:** I'm sorry.

12 **MR. POLAK:** That's okay. Let me finish the question
13 and then she can answer.

14 **BY MR. POLAK:**

15 Q. Have you seen an uptick of the negative reviews that were
16 complaints on the BBB website?

17 A. Yes. We had never had any activity whatsoever on the BBB
18 website, and then after March, we have had I don't know how
19 many, but we have had several negative reviews on that website.

20 Q. People can leave those anonymously, right?

21 A. Well, they are not anonymous to the BBB, but they are
22 anonymous to us.

23 Q. Have you been able to determine -- so, in other words,
24 anybody posing as somebody else could go and post a publicly
25 anonymous complaint, right?

1 A. They can.

2 Q. Have you been able to determine whether any of those
3 uptick in negative complaints have been false?

4 A. Yes, well --

5 Q. Let me use the word "fake."

6 A. The complaint -- the student on the other end of the
7 complaint, I can't speak to that, but when the student writes
8 what they write about us, the BBB allows us to send them
9 documentation. Like, for example, we had a very negative
10 complaint. We couldn't find the student, the database, so we
11 sent that and they took it down. We had a student say that
12 they didn't receive a scholarship, so we sent them the
13 documentation that showed them that they did receive one.

14 And then we had a student say they didn't get a
15 scholarship, and we sent them the documentation that they never
16 filled out the scholarship application. So it's been someone's
17 full-time job to monitor the strange activity on the BBB that
18 never existed, not a single complaint or anything before March.

19 Q. Now, did you --

20 **THE COURT:** I'm sorry. You said someone full-time.
21 Someone employed by PTK as of --

22 **THE WITNESS:** Yes, sir, Your Honor.

23 **THE COURT:** Hold on. Someone employed by PTK?

24 **THE WITNESS:** Yes.

25 **THE COURT:** Their job responsibility is to monitor

1 that website now?

2 **THE WITNESS:** Yes.

3 **THE COURT:** Okay.

4 **BY MR. POLAK:**

5 Q. Did you see a Better Business Bureau complaint by
6 Ms. Malek?

7 A. I did.

8 Q. And Ms. Malek is someone who tendered a declaration --

9 A. Marek.

10 Q. Marek. I'm sorry. Ms. Marek tendered a declaration, and
11 she is one of the accusers of Rod Risley?

12 A. Yes.

13 Q. But the Better Business Bureau complaint related to, what,
14 a scholarship?

15 A. Yes, she was complaining that she didn't receive
16 scholarships.

17 Q. How recent was that complaint?

18 A. She filed a complaint within the last month.

19 Q. Okay. And how did you respond to that?

20 A. We went into the computer system and found the canceled
21 checks that she had received from her scholarship, and we sent
22 those to the BBB and they took down her complaint.

23 Q. So she complained publicly on the BBB that she had never
24 received a scholarship, but the truth was that she actually had
25 received scholarships and received multiple checks?

1 A. Right, two checks.

2 Q. So if it is all this bad, you have all of this negative
3 energy out there and negative information, why haven't you
4 taken any steps to publish your own response to these
5 allegations, in other words, solve the deception with your
6 truth?

7 A. It's bad enough that my Chief Operating Officer, Fredrica,
8 has to monitor the BBB. I do not have the resources to sit
9 there and publish out 5,000 pages of anything. We are busy
10 working with students. We are coaching students, training the
11 new advisors that came on this summer, and we don't have enough
12 people to do all the work that we are supposed to be doing. I
13 don't have any way or desire to stoop to the level of dealing
14 with this in that negative way. I'm here instead --

15 Q. Is there a bond issue too --

16 **THE COURT:** Wait. Hold on. Please allow her to
17 finish her statement.

18 A. I'm here instead, instead of doing something like that. I
19 would never do that.

20 **BY MR. POLAK:**

21 Q. Thank you. Is it also a volume issue? I mean, how would
22 you ever start to combat 5,000 websites that are each
23 integrated with each other, that have had two months to get the
24 synergies going, combined with all of the social media sites,
25 all of which use artificial intelligence to create these fake

1 images and photoshopped pictures? Do you even know where to
2 start to compete with that?

3 A. No, not -- I would have to hire someone to deal with it,
4 and even then, to try to push down these things, they would
5 still be there, but it would cost thousands of dollars, and I
6 don't know what it would cost to deal with the chapters and the
7 colleges. It would be ten thousand dollars just to deal with
8 me.

9 Q. You have looked at it just for your own purposes, but
10 there was no guarantee that that ten thousand dollars was going
11 to eliminate the problem?

12 A. Right. It will cost you about \$3,500 a month to start to
13 try to push this stuff down. There's no guarantee it will
14 work. And after that, we need to do this for at least three
15 months. And after that, we are probably going to have to keep
16 doing it. If they publish something and it gets up -- it would
17 just be an ongoing cost bleeding away from the work.

18 Q. What effect has this online negative campaign against you
19 and the company, the nonprofit organization, had on your staff
20 and its morale?

21 A. I'm trying to go in every day and tell them it is going to
22 be okay, but my employees come to me and they're, like, Should
23 I get another job? Should I leave? And I'm scared. I'm so
24 scared. And we have 45 families right here in Jackson that
25 depend on their income. And it's not just that. We are a

1 nonprofit. We are a nonprofit.

2 Q. The people who work for you believe in the mission?

3 A. They are all -- they are all student success
4 professionals. You can't come to work for us unless you
5 already know how to help students. They all have degrees.
6 These are professionals.

7 Q. Can you repair morale with money?

8 A. I cannot. I cannot. It will take years for us to come
9 out of this funk, if we can come out of it at all.

10 Q. PTK and you have requested this Court award you fees in
11 this motion. Why?

12 A. Because it's just more expense to get this case and this
13 notebook, and everything in here today is so much money. And I
14 thought after the surveys we wouldn't be here again. We would
15 just have to go to trial, and then everyone would present their
16 case and respect the process in between. But we are here again
17 because we are in bad shape, as far as what they have done on
18 their way to trial.

19 Q. You were here in the courtroom when the Court was
20 questioning Mr. Moradian and his counsel about whether they
21 ever intended to ask those questions again on those topics, and
22 they promised, no, they wouldn't. Here you are having to
23 relive it all over again, not just in a survey that was sent
24 but in 5,000 websites and articles that contained the same --

25 A. Not just web pages and articles but social media that can

1 just interact every single day and keep tripping it out there.

2 Q. Is there anything you think is going to stop Michael
3 Moradian from his online campaign against you personally and
4 against PTK?

5 A. I think the Court can. That's the only relief I think
6 that we would be able to get.

7 Q. Is that why you are here?

8 A. Yes.

9 **MR. POLAK:** Thank you, Your Honor. Pass the witness.

10 **THE COURT:** We are going to break for lunch now.

11 Let's be back at 1:45. It's 12:15 now. We will be back at
12 1:45, and we will start with the cross-examination, I presume,
13 of Dr. Tincher-Ladner -- is it Tichner or Tincher?

14 A. Tincher, just like it is spelled. But I'm used to
15 students mispronouncing it.

16 **THE COURT:** Tincher. I want to make sure I'm correct
17 in pronouncing your name. I do owe the parties an apology too.
18 I know we were supposed to start at 8:30, and I think we
19 started about 8:40, and typically when I'm late coming in -- I
20 know it was 8:30 when I came in because I said it was 8:30,
21 right? But I do owe you an apology. I think we started about
22 8:40. I did want to do that. We will be back at 1:45. Thank
23 you.

24 **(RECESS TAKEN AT 12:16 P.M. UNTIL 1:45 P.M.)**

25 **THE COURT:** Ms. Ladner, you may return to the stand.

1 I failed to ask, is there anything we need to take up before we
2 start?

3 **MR. WALLACE:** No, Your Honor.

4 **THE COURT:** You may proceed.

5 **CROSS-EXAMINATION**

6 **BY MR. NEWMAN:**

7 Q. Good afternoon, Ms. Tincher-Ladner. My name is Derek
8 Newman. I have a few questions for you.

9 A. Okay.

10 Q. First, PTK advertises that all of its members are in the
11 top ten percent of their class; is that right?

12 A. Yes.

13 Q. And PTK gets some information from colleges about
14 membership; is that correct?

15 A. Like what kind of information?

16 Q. PTK gets information about members' GPAs, for example; is
17 that right?

18 A. We don't -- we get lists of people who qualify for
19 membership.

20 Q. And with respect to those lists of people who qualify for
21 membership, is it disclosed to PTK what their GPAs are, the
22 members?

23 A. They are allowed to upload that if they want to.

24 Q. And college chapters put rules in the charter about who
25 gets invited; is that right?

1 A. What now? What charter?

2 Q. So PTK invites students to join. Yes?

3 A. No, the colleges decide who is going to be invited. If
4 they want us to invite them, then they send us their
5 information.

6 Q. All right. So colleges decide who gets invited to join
7 PTK, correct?

8 A. Correct.

9 Q. And then once they do that, they will advise PTK, and PTK
10 sends a membership invitation to students to join; is that
11 right?

12 A. Not always.

13 Q. Sometimes?

14 A. Right.

15 Q. And the college chapters, are you aware of criteria that
16 college chapters place on who receives a membership invitation?

17 A. Yes. They -- we put in our database their minimum GPA and
18 the -- whatever the criteria is, we try to keep track of it.

19 Q. GPA is one of them?

20 A. Yes.

21 Q. Some schools have a minimum GPA of 3.0; is that right?

22 A. Not that I'm aware of.

23 Q. Some schools have a minimum GPA of 3.5; is that right?

24 A. Right. Most of them.

25 Q. And the schools, when advising you of the minimum GPA, the

1 schools don't advise you about class rank, in other words, what
2 percent of students fall within a certain GPA; is that right?

3 A. No.

4 Q. Because the college decides who gets invited, and the GPA,
5 the colleges can invite students who are outside the top ten
6 percent of their class based on class rank, right?

7 A. No.

8 Q. So PTK has no way of knowing whether students with a 3.5
9 GPA constitute 10 percent of their class, 20 percent of their
10 class, 30 percent of their class, or 40 percent of their class,
11 correct?

12 A. No. We study this, and I think in discovery you should
13 have our studies of their -- what percent of students we are
14 inviting at each one of these colleges, every single one of
15 them.

16 Q. So PTK doesn't have access from the colleges to what
17 percent of the students fall within a 3.5 GPA, correct?

18 A. No, we have access to their enrollments through the
19 federal government, and we use -- and it's by college, so we
20 have access to how many students are on those campuses.

21 Q. Community colleges don't rank students the way law
22 schools, for example, rank students, number one, number two,
23 number three, correct, to your knowledge?

24 A. I don't know. They might do whatever they want. You
25 would have to interview all 1250 of them.

1 Q. You have a lot of experience in the community college
2 industry, correct?

3 A. Yes.

4 Q. Are you aware of any community college that ranks
5 students?

6 A. Yes, they have valedictorians. They have their -- it is
7 different everywhere.

8 Q. To your knowledge, community colleges generally don't
9 place class rank on students. That's unusual at the community
10 college --

11 A. I don't know. I'm not a -- you know, I don't know what
12 they do. I know they have here's our valedictorian, so
13 obviously that was number one. So I think they do whenever
14 they do that.

15 Q. But that is never disclosed to PTK, is it?

16 A. If that valedictorian was up there, you can bet they were
17 asked to be a member.

18 Q. But class rank is never disclosed to PTK, other than maybe
19 valedictorian, the number one person?

20 **COURT REPORTER:** Slow down, please.

21 **MR. NEWMAN:** Thank you.

22 **BY MR. NEWMAN:**

23 Q. Class rank is never disclosed by colleges to PTK, except
24 perhaps who the valedictorian is, correct?

25 A. They don't have to disclose class rank. We have a way to

1 determine if they fall in the top ten percent without asking
2 the colleges and getting them to do more work than they are
3 already doing.

4 Q. That's fair. And you testified that colleges don't have
5 to advise PTK, but my question was whether they ever advise
6 PTK.

7 A. They give us lists of students.

8 Q. And the list of students are never by class rank, correct?

9 A. I don't know what's in their databases.

10 Q. You don't know what's in PTK's database?

11 A. I said I don't know what's in a college's database. I
12 only know what's in PTK's database.

13 Q. Exactly. And in PTK's database, PTK does not know class
14 rank of any of its members, other than maybe a valedictorian,
15 correct?

16 A. We know what percent of members we have based on how many
17 students are at that college. So if the criteria is whatever
18 it is and above and we are getting those students, then I would
19 say, yes, we know they are in the top ten percent.

20 Q. Because you've done the math yourself?

21 A. Right, every year.

22 Q. For which school have you done the math yourself?

23 A. Every school. Every chapter.

24 Q. Every year for every chapter, you do math?

25 A. For the schools, we do the math -- well, we haven't done

1 it in a while, and because you guys wanted it, we went back and
2 did it as much as -- you know, every year.

3 Q. Is that the materials that's presented in the supplemental
4 declaration that you filed in your rebuttal brief?

5 A. I don't know what's in my supplemental. I know it was in
6 your discovery.

7 Q. Have you reviewed the public records responses that Honor
8 Society has produced in this lawsuit?

9 A. No, not in detail.

10 Q. And do you have any reason to believe that any public
11 records request that Honor Society produced are false or
12 fabricated?

13 A. On giving the Michael Calvert incident, probably, yes.

14 **MR. NEWMAN:** Ms. Wharton, can we pull up Exhibit LL.

15 **MR. POLAK:** Can I see it?

16 **MR. NEWMAN:** Of course, you can.

17 **MR. POLAK:** Usually we get it before it goes up.

18 **THE COURT:** Let them see it before I see it. Let the
19 other side see it before I see it.

20 **MR. NEWMAN:** Okay. I don't have a -- we can have
21 them available on iPad.

22 **MR. POLAK:** Is it demonstrative?

23 **MR. NEWMAN:** Yes.

24 **MR. POLAK:** This is an actual e-mail from someone --
25 from a school -- that you claim you got from a school on a

1 Freedom of Information Act request?

2 **MR. NEWMAN:** I'm not claiming anything. I'm just
3 going to ask the witness about it.

4 **MR. POLAK:** It's not a demonstrative document. Okay.
5 We object, and I can explain my reasons why, but we object. I
6 can explain here in a second if you would like me to.

7 **THE COURT:** Okay. I heard him say -- well, what is
8 it?

9 **MR. NEWMAN:** It is a response to a public records
10 request that Honor Society served that indicates that students
11 who have a 3.5 percent GPA are 54 percent of the school, not
12 10 percent of the school.

13 **THE COURT:** What is the basis for the objection?

14 **MR. POLAK:** Thank you, Your Honor.

15 First of all, I believe it was proffered as a
16 demonstrative. Actual real evidence is not a demonstrative
17 aid. Usually a demonstrative aid is used to assist the
18 witness, as the Court knows. So it doesn't qualify as a
19 demonstrative document. Assuming that they actually want to
20 introduce it, it goes to the issues that I have forecasted for
21 the Court earlier. These FOIA request documents are not
22 authenticated and they contain hearsay. So we would object to
23 consideration of it for both of those reasons. So it is not a
24 demonstrative. That is objection number one. Objection number
25 two is it is not authenticated. And objection number 3 is it

1 is hearsay and might even contain hearsay within hearsay.

2 **MR. NEWMAN:** Your Honor, it is a response to a public
3 records request. We had a week to prepare a response to the
4 preliminary injunction. We didn't have time to serve a
5 subpoena or take a deposition in that amount of time.

6 I think that when the Court sees the document, the Court
7 will know that it is something that we are likely to prove at
8 trial because our -- their burden is to show likelihood of
9 success on the merits, and so we are showing the Court that we
10 have documents that in the end we will present at trial that
11 indicates the facts that schools are admitting PTK members --

12 **THE COURT:** Well, what is concerning about it is that
13 it's a document that is not authenticated. It's your
14 representation that you received it from a school in response
15 to your request, your FOIA request. And that's you making a
16 representation that that was actually sent to you. So I will
17 take it for what it's worth, but I'll allow you to -- she can't
18 identify it.

19 **MR. NEWMAN:** No.

20 **THE COURT:** You know, and she's the witness.

21 **MR. NEWMAN:** That is correct.

22 **THE COURT:** So I will take it for what it's worth.
23 And I think I forecasted about what I think it is worth.

24 **MR. POLAK:** Judge, if I might also add, this is a
25 document that was not on their exhibit list. It's not attached

1 to any declaration. This is Exhibit LL. There is no such LL
2 attached to any declarations that were filed by your deadline
3 of Wednesday at noon. There might be other documents like this
4 in this, but there is no "this document" in there.

5 **THE COURT:** Do you have another one like that that
6 was part of -- that everybody has seen at least.

7 **MR. NEWMAN:** I will skip this one for now. Thank
8 you.

9 **THE COURT:** Okay.

10 **BY MR. NEWMAN:**

11 Q. Are you familiar with Holyoke Community College?

12 A. Holyoke Community College? Not exactly, but the name
13 sounds familiar.

14 Q. Do you know whether you have done math to determine
15 whether the students that are invited at Holyoke Community
16 College constitute 10 percent, 20 percent, or 30 percent of
17 their class?

18 A. I have done the math at Holyoke. I'd have to look at the
19 documents that I produced, but I'm fairly certain it is less
20 than 10 percent.

21 Q. Are you familiar with Wor-Wic Community College?

22 A. Yes.

23 Q. Have you done the math on Wor-Wic?

24 A. I've done the math on every community college for so many
25 years and gave that to you as discovery.

1 Q. You made that available for your lawyers to provide in
2 discovery?

3 A. Yes.

4 Q. I haven't received that.

5 **MR. POLAK:** Judge, it's --

6 A. You did.

7 **MR. POLAK:** That is untrue. They have gotten them.

8 **BY MR. NEWMAN:**

9 Q. Is it your testimony that some PTK chapters do not have
10 GPA requirements below 3.5?

11 A. Yes. Well, I mean, below 3.0. Yes. Sorry.

12 Q. Some colleges have a GPA requirement of only 3.0, not 3.5,
13 correct?

14 A. I would have to look at the list. The average is 3.5. I
15 know there's just a handful at 3.25. There's some at 3.75. So
16 the average is 3.5. I gave you a document with everyone's
17 thresholds on there. I don't have it memorized how many are at
18 3.0, but I'm sure it is less than -- if it's any at all, it's a
19 very small number. So I don't know. Without my work in front
20 of me or the computer at Phi Theta Kappa, you are asking me
21 about over a thousand institutions right now. And I'm sorry, I
22 can't definitively answer your questions. I know the average
23 is 3.5.

24 Q. As you sit here today, you don't know whether any colleges
25 invite students to join PTK with only a 3.0 GPA?

1 A. I don't really know. I'd have to look at the document.
2 You have it in discovery, that document as well. We provided a
3 document to you that has every single GPA threshold for every
4 college. Do you have that document?

5 **THE COURT:** No need -- I mean, just answer the
6 question that is asked.

7 **THE WITNESS:** Okay. Sorry, Your Honor.

8 **BY MR. NEWMAN:**

9 Q. PTK will issue a letter of recommendation for any student
10 who requests it. Is that right?

11 A. Yes, there is a portal where a student can request a
12 letter of recommendation from the system.

13 **MR. NEWMAN:** May I see Moradian 7.

14 **MR. POLAK:** Your Honor, we do have an objection to
15 this that was stated on our objections. Would you like me to
16 present that objection now?

17 **THE COURT:** What's the basis for the objection?

18 **MR. POLAK:** The objection does not have anything to
19 do with the first page, but the pages after that do not seem
20 related to the first page. There is no evidence in the
21 declarations as to the source of these, whether these social
22 media posts that are here have been snipped and repasted onto a
23 Word document, or whether they are actually from the internet.
24 There is no ability to tell the date or time or place or manner
25 in which they were secured. There also is a page at the end of

1 Exhibit 7 about a "Do not recommend" -- you have this --

2 **THE COURT:** Well, let's deal with the page that I see
3 first. It's fine. Right?

4 **MR. POLAK:** If that is all that counsel is going to
5 use is page 1 of Exhibit 7, then we would have no objection to
6 that, but if he is seeking to use and introduce the remainder
7 of Exhibit 7, yes, we would have a problem with it.

8 **THE COURT:** Okay. Is Exhibit 7 something that you
9 received or that -- you received --

10 **MR. POLAK:** We did receive Exhibit 7, and we
11 specifically provided objections to Exhibit 7 on the objections
12 that we filed last evening I think at about 6:05.

13 **THE COURT:** When I should have been gone home.

14 **MR. POLAK:** Yeah. Maybe we could answer -- if
15 counsel does not intend to look at those other documents in
16 Exhibit 7, and he is only going to look at the letter of
17 recommendation that's on the first page, then we have no
18 objection to the use of that document. It is clearly coming
19 from PTK.

20 **MR. NEWMAN:** I'm only asking about the first page.

21 **THE COURT:** Okay. All right. Thank you.

22 **BY MR. NEWMAN:**

23 Q. Do you recognize the form of this document?

24 A. I have a problem with this document because the symbol on
25 the bottom left-hand corner here should look like Phi Theta

1 Kappa in Greek letters. It also has a lot of words pushed
2 together. So I have a problem with this document.

3 Q. Do you recognize the form of the document?

4 A. I don't recognize this document because our markings
5 wouldn't have this weird symbol here. The address is, like,
6 gone. Phi Theta Kappa is pushed together. There are words in
7 paragraphs that are pushed together.

8 Q. Do you recognize the words in the paragraphs from a form
9 that you do have?

10 A. I would have to go into our computer system. This is our
11 -- it looks to be the one that is automated, and so I don't
12 hand write these every day. So I would have to compare this
13 document to what we have in our system, and I would have been
14 happy to provide that as some sort of document you needed, but
15 this document, I don't know if this student is a student. But
16 I know the symbols are wrong. So I'm worried about this
17 document being messed with, because I can tell it has been.

18 Q. But as you sit here today, do you agree that PTK has an
19 automated letter that's similar to the words in this form?

20 A. Again, I would have to read the actual automated letter to
21 verify that that is what this is.

22 Q. Are you familiar with the letter that is automated today?

23 A. Yeah, I wrote it several years ago, and I apologize for
24 not memorizing every word that I wrote, but I can tell
25 something is wrong with this document.

1 Q. And looking at the words of the document, not necessarily
2 the Phi Theta Kappa symbol or the like, is there anything in it
3 that you think doesn't appear in the form letters of
4 recommendation that PTK regularly sends?

5 A. Again, I would have to look at the form letter and compare
6 it. I have no way to do that.

7 **THE COURT:** Do we have the form letter? You don't
8 remember -- were there any questions about this form letter at
9 her deposition?

10 **MR. NEWMAN:** I don't know. I wasn't -- it was before
11 my time.

12 **THE COURT:** Okay. Do we have a copy of the form
13 letter?

14 **MR. POLAK:** We do not.

15 **MR. NEWMAN:** First, Your Honor, it was before my
16 time. Second, this issue only arose recently, so I don't think
17 that question would have been asked. It is a new issue.

18 **THE COURT:** I will give you an opportunity to read
19 this letter, Dr. Tincher. First, I will give you an
20 opportunity to read it.

21 **MR. POLAK:** Your Honor, the document that counsel is
22 using on this screen is different than the document they gave
23 us as Exhibit 7. Mr. Wallace just pointed that out to me. The
24 document they gave us -- if I might approach, Your Honor.

25 **THE COURT:** Let me ask this question. The signature

1 on that document, is that your -- sort of the signature that
2 you use?

3 **THE WITNESS:** Yes, Your Honor.

4 **THE COURT:** I see -- I know you questioned whether or
5 not the Greek letters were the same.

6 **MR. POLAK:** The point, though, Your Honor, if I might
7 approach --

8 **THE COURT:** Okay.

9 **MR. POLAK:** This is the document that they gave us on
10 Wednesday at noon. If you look on the bottom left-hand corner,
11 you see on the document they gave us, it says in Greek, Phi
12 Theta Kappa, those Greek letters. If you look at your screen,
13 there's something entirely different on that document, and I
14 think that's what the witness is talking about it being
15 adulterated. The document that counsel is using is not the
16 document they gave us earlier in the week.

17 **MR. NEWMAN:** Thank you for pointing that out. I'm
18 happy to use the paper copy.

19 **MR. POLAK:** I think the bigger concern is that you
20 are using a document that appears adulterated, and it is
21 represented as something you actually gave the Court.

22 **MR. NEWMAN:** It is exactly what we gave the Court.
23 It might have been rendered differently in an electronic form,
24 but it is exactly what we gave the Court.

25 **MR. POLAK:** How it is rendered differently than what

1 you gave to us?

2 **THE COURT:** Hold on. Okay. I've -- well, I do --
3 for the record, I will just tell you for the record, Phi Theta
4 Kappa does appear on this document. The Greek letters Phi
5 Theta Kappa, it looks like, at least from the screen that I'm
6 reviewing, the Phi Theta Kappa Honor Society, which appears on
7 the screen -- what appears -- what it looks to the Court like
8 is that there may be a different font in type in these two,
9 might be. I don't know. But the Phi Theta Kappa down in the
10 bottom is definitely -- there is no space between Phi and
11 Theta, and Kappa appears to be in a different font than Kappa
12 on the original page. And honor society appears to be in a
13 different font.

14 **MR. POLAK:** I understand what you are saying. I
15 don't know that I would necessarily disagree that it's a
16 different font. The problem I'm having, when documents are
17 filed, they are filed as PDFs with the Court. A PDF should not
18 change after it is created unless you go into the PDF and
19 change it. What doesn't make sense to me is that the document
20 that I have as Exhibit 7 is very different from the -- like, in
21 a significant way, like, it's a different document -- it has
22 changes to it, than what it is that counsel is using here
23 today. It tells me that either they have a glitch in their
24 system or there is -- regardless of whether it was intentional
25 or unintentional glitch, I'm going to assume unintentional, it

1 still has modified the document that they gave you that they
2 attached to a declaration that they said this is the true and
3 correct copy.

4 So what it is that counsel is using right now is not what
5 they gave you, and it definitely is not what they gave us. We
6 can argue about materiality, I get that, but documents are
7 supposed to be what it is that they say they are. That is the
8 essence of authentication. And if the document that is
9 attached to Mr. Linke's or Mr. Moradian's declarations that
10 were filed with the Court on Wednesday or what I gave you that
11 you are holding in your hand are different from the one he is
12 now proffering as, oh, yeah, this is what I filed with the
13 Court, because it's not, ipso facto --

14 **THE COURT:** They may have the document, but clearly,
15 this is not a copy of the document, because the Greek letters
16 Phi Theta Kappa is on this one, and it's not on the other one.
17 That's the most glaring thing. But I do believe, as I was
18 saying, that the typed Phi Theta Kappa Honor Society --

19 **MR. NEWMAN:** Your Honor, I have a theory as to what
20 happened. We prepare PDFs and attach them, like counsel said.
21 And then for purposes of making the display easier, we
22 converted them to a PowerPoint presentation. We are pulling
23 the original PDF. Let me see how that looks.

24 So this is -- what you are looking at now is the same as
25 what you are holding in your hand. I think, Your Honor, what

1 it is is that we shouldn't use the PowerPoint documents. We
2 should use the original PDFs. Is that okay?

3 **THE COURT:** All right. That would satisfy at least
4 on this document. But we are only asking questions about this
5 particular document that is on the screen right now.

6 **MR. NEWMAN:** So in the conversion from the PDF to the
7 PowerPoint, the rendering was jumbled.

8 **BY MR. NEWMAN:**

9 Q. All right. No problem. You have testified that you have
10 done the math for every college to determine what percent of
11 students have a 3.5 GPA; is that right?

12 A. Yes.

13 Q. But in connection with this motion and the evidence you
14 submitted, you didn't submit any documents substantiating the
15 math, correct?

16 A. I did.

17 Q. Can you identify the document?

18 A. There is several spreadsheets, one for each year. The
19 spreadsheet has the raw data from the number of students that
20 were invited from Phi Theta Kappa for each year. And then
21 there was another spreadsheet, you know -- not spreadsheet but
22 tab to the spreadsheet that gave you the enrollments at that
23 college, the unduplicated head count enrollments for that
24 college, and it also had, based on the AACC's report, an
25 estimate of the other types of students that were at that

1 college.

2 So at the end of the day, there was a numerator that was
3 developed that has the number of students invited to PTK for
4 the year, and in the denominator are all the students on that
5 campus or at that college -- not campus but college. And those
6 two numbers were divided, and they are presented in that
7 spreadsheet for every school, for as many years as we could
8 pull out of our system with the information that we had. But
9 yes, I think those were given to you guys in discovery, I'm
10 assuming.

11 Q. Neither the numerator nor the denominator was based on
12 what percent of the class falls within a 3.5 GPA, correct?

13 A. Yes, the numerator was the number of students invited. So
14 let's say a college is only inviting students with a 3.5 and
15 above -- okay? So that would have been in the numerator, the
16 number of students that have a 3.5 and above that were invited.
17 In the denominator are all the students. So when I divide
18 those two numbers and I get something less than ten percent,
19 then that is saying that you are at the top of the class
20 because you are over -- you're in the top part of the GPAs that
21 can be evaluated. So that's our logic for doing the math. And
22 we provided as many -- we provided you five years, I believe,
23 worth of data.

24 Q. And the math that you did is based on who gets invited,
25 correct?

1 A. Not all of it. There are three pieces. There are the
2 federal government's head counts that they use for PELL grants
3 and other information. The only thing that came from our
4 database was the numerator, which is the number of students
5 that got invited, because we know who got invited.

6 Q. The numerator is the number of students who were invited?

7 A. Right, and those came from the college list of students
8 that say these are the students that are eligible to be
9 invited.

10 Q. And the students who are eligible have criteria beyond
11 just GPA, correct?

12 A. Yes, the students that are eligible have to do with their
13 charter, and, you know, the GPAs of those students could vary,
14 but they have to follow the rules in their charter. So if a
15 student is in a two-year program, they need to be at least 12
16 hours of credit because we have to have something to base that
17 GPA on. If a student is in a one-year program, like a welding
18 program that's only one year, they only have to have 6 hours.

19 Q. Is it limited to GPA or there's other factors?

20 A. There's one other factor. We can't count the GPA based on
21 one class, so we have to have some sort of amount of
22 information to determine if you've been at that school long
23 enough to have a GPA that is substantive.

24 Q. But the schools don't inform you whether students who fall
25 within a 3.5 GPA, for example, are in the top 10 percent or

1 20 percent or 30 percent of the school?

2 A. The schools provide us with the students. We know the
3 count of students that had the highest GPAs, and then the
4 denominator is all the other students. That's how we do it.

5 Q. And students who are invited, you just testified there is
6 criteria beyond just GPA, correct?

7 A. Yes, there is GPA, and then there is at least one semester
8 of being at that college, which is, on average, 12 hours.

9 Q. I'd like to turn your attention to Exhibit 7 that's in
10 front of you. Do you now recognize the form of this letter or
11 no?

12 A. No, because these are automated letters. This letter is
13 for a student --

14 Q. I'm asking you about the form of this letter, not about
15 the particular student.

16 A. Without going and looking in our database at the form
17 letter and comparing it to this, unless this student
18 authenticated this letter is belonging to him, I can't tell you
19 if this is a letter that is in the database. It's an automated
20 letter of recommendation. Students typically use it to prove
21 they are a member so they can get their scholarship. That is
22 what it is used for.

23 Q. So you are unfamiliar with the form of the letter as you
24 sit here today?

25 A. I am not unfamiliar with its existence. I wrote it

1 several years ago, so I can't tell you word for word -- if we
2 are going to go through this letter word for word, then I can't
3 confirm this is the letter that sits in the PTK database
4 because this went to a student, not you and not your client.

5 **THE COURT:** Hold on for a second. All that he has
6 asked at this point was if you recognize this as the form, and
7 if you don't recognize it as the form, then you don't recognize
8 it. But I've given you an opportunity to read it to see if it
9 sounds like the form letter that you all drafted or it was
10 sent. Because this is a letter that PTK sends out to others.
11 Right? To whom it may concern.

12 **MR. POLAK:** You will notice that there is no Bates
13 number on this document. They have asked us for discovery. We
14 have produced letters of recommendation to them in discovery.
15 They come from our records. They chose not to use a document
16 that came from our records. I don't even know if this document
17 has been produced to us in the case. And I think that's where
18 the disconnect is happening is that this witness knows what it
19 is that has gone out the door, and she understands Bates
20 numbers, and she understands litigation very well now. And
21 that's the problem. They have chosen to use a document that
22 has a curious origin.

23 **MR. NEWMAN:** We had a week to present documents.

24 **THE COURT:** I'm sorry?

25 **MR. NEWMAN:** We had one week to prepare. It was

1 difficult to compile it all.

2 **THE COURT:** I will continue the hearing, then, if you
3 need more time to assemble records that were produced in
4 discovery.

5 **MR. NEWMAN:** I'm not asking for that right now, Your
6 Honor.

7 **THE COURT:** Okay.

8 **BY MR. NEWMAN:**

9 Q. Do you know whether the form of letter that you send says
10 that the student has achieved and maintained academic
11 excellence at a college standing among the top ten percent of
12 the class?

13 A. Where does it say that in here?

14 Q. The third paragraph, last sentence.

15 A. Like I said, I would have to look at the form letter. I
16 just would like to compare to what is in the database, and we
17 could have given that to you.

18 Q. So you don't know as you sit here today?

19 A. I don't know if we used the exact words. I mean, there's
20 no date on this letter.

21 **THE COURT:** It's been asked and answered. You don't
22 know.

23 **BY MR. NEWMAN:**

24 Q. PTK's membership is offered at a single moment in time
25 when there aren't any renewals; is that right?

1 A. We send -- the students join -- the maintenance part is
2 typically something that happens on the campus end. So when
3 the students get ready to graduate, they're typically
4 recognized in the program, and at that point they do a
5 reconciliation if they are still in, and it is all done really
6 at the campus level.

7 Q. Are students ever kicked out of PTK?

8 A. I assume they are. You would have to interview the
9 colleges. We do not on our end because we don't have access to
10 their academic records after they join. We allow the colleges
11 to decide who they are going to honor in their graduation, who
12 gets to wear the stole. You know, as I testified earlier, the
13 college chapter after the point that they become a member, they
14 really try to manage the records on their own.

15 Now, occasionally an advisor will go into the system and
16 they will move someone off the active roster, I would imagine,
17 but, you know, there's a lot of different ways that they,
18 quote, get kicked out or whatever you want to call it, but it's
19 not about getting kicked out as much as not getting to be
20 recognized at graduation.

21 Q. PTK has done nothing to confirm that students who are
22 initially invited maintain a certain percentile rank in the
23 class, does it?

24 A. The advisors do. They have access to the records that
25 would constitute that.

1 Q. Is it your testimony that every single student who becomes
2 a member always maintains a certain class rank?

3 A. You are talking about 4.3 million people, so, okay.
4 That's a really hard question to answer definitively. I
5 believe I've done my best job to explain to you how it works.
6 And so it's hard to answer that question.

7 **THE COURT:** Is the answer yes or no, though? You
8 injected 4.3 million, and you can't speak to 4.3 million,
9 right?

10 **THE WITNESS:** I mean --

11 **THE COURT:** I mean, I understand the going back and
12 forth between the two, but I know we are trying to get to a
13 point to help the Court figure out what information is
14 necessary.

15 **THE WITNESS:** Right.

16 **THE COURT:** Just answer the question that is asked,
17 and if you need some explanation, you can let him know. And if
18 he needs further clarification, then he can follow up with his
19 specific question.

20 A. Okay. What is your question?

21 **THE COURT:** Rephrase your question. I'm sorry. I
22 mean, not rephrase. Restate your question.

23 **BY MR. NEWMAN:**

24 Q. Let me just start with PTK itself has done nothing to
25 confirm that students who are admitted to PTK maintain a

1 certain GPA requirement or class rank throughout their tenure
2 as a member, correct?

3 A. The chapters do. The PTK chapters do. So I would say not
4 correct.

5 Q. PTK doesn't. The chapters do but PTK does not?

6 A. They are PTK chapters.

7 Q. Okay. Fair. And does PTK have these records of
8 verification of students maintaining a certain GPA?

9 A. No, not typically. Like I said, the advisor will go into
10 the system and move the students off the active roster role.
11 We don't charge more than one time, so there's not this reason
12 for us to be notified in such -- to answer your question, there
13 is no reason for it.

14 Q. That is fair. So when you sit here today, you don't know
15 if any one student has maintained a certain GPA or class rank?

16 A. I do know that colleges rescind their membership. I don't
17 know how they do it. They all do it very differently. But I
18 do know they rescind the membership, and they do not get
19 recognized at graduation if their GPA doesn't stay where it is
20 supposed to be.

21 Q. But as a PTK member, any member qualifies for the letter
22 of recommendation that your system will send out, correct?

23 A. If they are a member, they can go request this letter of
24 recommendation, correct, as one of the benefits to being a
25 member.

1 Q. And the letters are issued based on an automated system?

2 A. Yeah, they can log into their portal and simply request
3 that this be sent to them.

4 Q. And when a member requests a letter, there is no research
5 done on the member to confirm that they still have maintained
6 the class rank or GPA, correct?

7 A. With 60 full-time employees, no, it's not possible for us
8 to do that.

9 Q. Are PTK members members for life?

10 A. If they pay their dues and they are called PTK, and we
11 don't charge them again, they can refer to themselves as they
12 were Phi Theta Kappa, yeah.

13 Q. How often do PTK members pay dues?

14 A. When they join, they pay dues. They are not dues. It's a
15 membership fee.

16 Q. They pay a membership fee once?

17 A. As far as I'm aware, yes. That's the way it is supposed
18 to work.

19 Q. And thereafter, a student who pays membership fees is a
20 member, correct?

21 A. What?

22 Q. After paying fees --

23 A. They pay the fee one time when they join.

24 Q. And then the student is a PTK member for life, correct?

25 A. Yes.

1 Q. And any student member can request a letter of
2 recommendation, yes?

3 A. Yes, if they have access to the system. They have to log
4 in.

5 Q. Are you familiar with the reasons why students join PTK?

6 A. Yes.

7 Q. Do students join PTK because they view it as exclusive?

8 A. The reasons that students join Phi Theta Kappa are as
9 diverse as the students themselves. Everybody has their own
10 reason for joining. I can give you the top two or three
11 reasons, but I can't give you an exhaustive list and answer
12 that question definitively for all students or for any one
13 particular student.

14 Q. Do you agree that many students join PTK because they view
15 it as exclusive?

16 A. I've never heard the word "exclusive" used until Honor
17 Society started using it. It's not a word that is anywhere in
18 any of our publications. So I would say, no, students don't
19 join PTK in general because it is exclusive.

20 Q. Do students join PTK because they believe they are at the
21 top of their class?

22 A. Students join PTK because they want their academic
23 achievements recognized. And so they join because they got
24 invited to join, and the college is saying, you are the top,
25 you are in the top of the top. And so I've never, you know --

1 I don't know where in that percent they might fall. I just
2 know, based on our math, that 99 percent of the time they are
3 in the top ten percent, and it's in the records that I prepared
4 for you.

5 Q. Let's talk a minute about Honor Society. Did you first
6 learn of Honor Society's entry into the two-year honor society
7 market in 2017?

8 A. I can't tell the exact day that I knew Honor Society
9 existed. I learned more of how their business worked in
10 mid-2019. Around that time is when I started to realize they
11 had no academic criteria. Before that, I thought, you know,
12 they were a real honor society.

13 Q. In 2017, did you refer to them as the competition?

14 A. I thought of them as a competitor. Now I think of them as
15 an unfair competitor. But I've answered these questions in my
16 deposition about how I feel about them.

17 Q. Are you aware that in 2018, PTK's staff referred to Honor
18 Society as the enemy?

19 A. I'm not particularly aware, but when I'm looking through
20 the evidence in this case, I've seen an e-mail at that time,
21 but I don't, like, remember that in that time period. I
22 remember it as part of the case discovery.

23 Q. At one point PTK accused Honor Society of running a
24 phishing scam; is that right?

25 A. I don't know what you are talking about. Please just give

1 me some more information.

2 Q. Has PTK referred to Honor Society as running a scam?

3 A. No.

4 Q. You testified earlier about the AACC, the American
5 Association of Community Colleges?

6 A. Yes.

7 Q. And you testified that the AACC recognized PTK as an
8 official honor society in 1929?

9 A. Yes.

10 Q. And when the AACC did, PTK was recognized as an official
11 honor society, not the official honor society; is that right?

12 A. We were, at the time of that recognition, the only general
13 honor society that was available for all students. I would
14 have to look at the document that was produced by AACC on that
15 to see if it was a "the" or an "an." But, yes, we are the
16 official honor society for community colleges.

17 Q. And not since 1929 has the AACC or its predecessor ever
18 put into writing that PTK is the official honor society?

19 A. I don't know. You would have to check with the AACC.

20 Q. You are not aware of any documents where AACC has, since
21 1929, written that PTK is an official or the official honor
22 society?

23 A. We may or may not have put it in the program at their
24 convention. I don't know. I would have to look at all of the
25 convention programs where we present ourselves at their

1 convention and our scholars, so I can't sit here and say yes or
2 no, it's not written down, just because I don't know exactly
3 where it is.

4 Q. You sit on the board of directors of the AACC?

5 A. Yes.

6 Q. And as a board member, as you sit here today, you can't
7 recall any document over than the 1929 communication indicating
8 that PTK was the official honor society?

9 A. I was named to the board of directors last year, and we
10 meet four times a year, so I haven't always been on the board
11 of directors. So I'm not aware, during the last two years, of
12 it being in a board meeting, if that's your question.

13 Q. Let's talk a moment about scholarships.

14 A. Okay.

15 Q. When PTK advertises -- strike that. Does PTK advertise
16 that it offers an average of \$2,500 in scholarships per
17 student?

18 A. We advertise that the transfer scholarships average at a
19 \$2,500 rate, but it's a little higher than that actually, but
20 yeah.

21 Q. Does PTK advertise that those scholarships are exclusive
22 to PTK members?

23 A. Yes.

24 Q. So a transfer scholarship is a scholarship that a
25 four-year university gives to a transferring two-year community

1 college student; is that right?

2 A. A transfer scholarship is typically for a community
3 college student, yes, but -- yes.

4 Q. And do you agree that four-year universities offer
5 transfer scholarships and the opportunity to obtain them to
6 students, whether students are members of PTK or not?

7 A. Yes. I mean, most four-year colleges offer a couple of
8 different kinds of transfer scholarships. Depending on what
9 your GPA is, what happens is a PTK member may qualify for one
10 of those general scholarships because their GPA is correct, and
11 then because they are PTK, they get an extra scholarship called
12 a PTK scholarship.

13 So I know it is confusing, but there are lots of
14 scholarships for every kind of student, for a lot of different
15 reasons, but there are PTK exclusive scholarships that are
16 transfer scholarships, and there are also transfer scholarships
17 for other students too.

18 Q. Does PTK advertise that members have access to
19 \$246 million in member-only scholarships?

20 A. I don't know if it is 239 or -- it is somewhere around
21 there. That sounds about right.

22 Q. And do you have documents that you have produced in
23 connection with this lawsuit that shows that amount? You said
24 it might be 239 million in exclusive PTK scholarships
25 unavailable to non-PTK members.

1 A. Yes, I produced all of the calculations that we used to
2 arrive at that statistic for numerous years in the discovery.

3 Q. Have any been submitted in connection with this motion, if
4 you know?

5 A. They were submitted before this.

6 Q. So you don't know, as you sit here now, whether they have
7 been submitted in connection with this particular motion?

8 A. I didn't look at every document. But you have them.

9 Q. Thank you.

10 A. You're welcome.

11 Q. There was reference earlier to an embezzlement allegation.
12 You agree that a chapter advisor was arrested for embezzling
13 funds. The embezzlement took place while the person arrested
14 was a PTK chapter advisor, correct?

15 A. The embezzlement? Well, I don't know anything about the
16 embezzlement. I know that those were not PTK funds. I called
17 the college president when that happened. His name is Dr. Jay
18 Allen. He's the president of Itawamba Community College. And
19 I asked him to tell me what happened. He said, Lynn, those
20 funds were not PTK funds, they were college funds, and that PTK
21 did nothing wrong.

22 Q. But a chapter advisor, while as a chapter advisor for PTK,
23 embezzled funds, correct?

24 A. I don't know. That case hasn't gone to trial. I have no
25 idea.

1 Q. Fair. But the person was arrested for embezzling funds?

2 A. The person was arrested. At the time, they weren't a PTK
3 member. She is not a PTK employee. And we have no control
4 over the chapter accounts. And that's all I know about it.

5 Q. Shortly after PTK filed its claims against Honor Society,
6 PTK issued a press release; is that right?

7 A. We put a press release on our website, and we issued it to
8 three or four higher education news outlets. And that's how we
9 announced this lawsuit.

10 Q. And you authorized the press release?

11 A. Yes.

12 Q. And the same day that the press release was released,
13 Bloomberg published about your press release; is that right?

14 A. I have no idea if Bloomberg -- I don't even know what
15 Bloomberg is.

16 Q. Are you aware of any media sources that wrote an article
17 or republished your press release --

18 A. No one republished our press release that I'm aware of.
19 It is sitting on our website, and that's where it started, and
20 I think that's where it ended.

21 Q. Are you aware of any press that wrote an article after
22 that press release was written about the lawsuit?

23 A. Only the stuff that has been going on recently with Honor
24 Society have I seen their press release written about, but to
25 my knowledge, I have not seen our press release anywhere except

1 our website.

2 Q. Let's talk a moment about PTK Connect.

3 A. Okay.

4 Q. PTK Connect, does it have two sets of customers, one for
5 businesses and one for colleges?

6 A. There's PTK Connect and there's PTK Connect for business.

7 Q. In order to gain access to PTK for business or PTK Connect
8 for colleges, does a business or college have to pay a fee?

9 A. They have to sponsor the work that goes into creating that
10 platform. And that sponsorship is in the form of money.

11 Q. So money is paid to PTK in exchange for the benefits that
12 the college or business gets from PTK for business or PTK for
13 colleges, correct?

14 A. Yes.

15 Q. And did you testify that with PTK for business or PTK for
16 colleges, the college or the business that pays the fee gets a
17 verified database of more than 425,000 candidates?

18 A. That is estimated based on the number of students that
19 have signed a release of information to be recruited for job
20 purposes or for scholarship purposes.

21 Q. And when the college or business gains access to the
22 database of more than 425,000 top candidates, the college or
23 business gets access to information like e-mail addresses for
24 each member in the database, correct?

25 A. Yes, so they can contact them and recruit them.

1 Q. So would you agree that PTK is selling that personal
2 information to the business or colleges?

3 A. No, I would not.

4 Q. PTK takes a fee, colleges and businesses get the database,
5 but there's no sale there?

6 A. We don't refer to it as sales. It's called a sponsorship.
7 And you said personal information, and that's wrong. It's the
8 information that the student said that they could have so that
9 they could get a job offer opportunity or a scholarship
10 opportunity.

11 Q. A student's name is personal information, correct?

12 A. It is, I guess, a form of personal information.

13 Q. E-mail address is personal information, yes?

14 A. It's directory information.

15 Q. E-mail address is personal information, yes?

16 A. It is directory information.

17 Q. Is directory information comprised of personal
18 information?

19 A. It depends on what you define personal information as.

20 Q. Fair. PTK does provide e-mail address and students' names
21 and addresses to the colleges and businesses that pay for it,
22 yes?

23 A. Not always. Students don't like to give their address.
24 We don't have it.

25 Q. Most you do, correct?

1 A. I don't know. I would have to look. People are funny
2 about what they give you these days, so I can't tell you the
3 percentage of students that give us their address. I would
4 imagine it is pretty high. But yes, that is part of being able
5 to contact the student is to receive mail at their home from
6 the college or the business.

7 Q. Do you agree that the 425,000 candidates listed in the
8 database constitutes data?

9 A. It's data in a database.

10 Q. And PTK makes that data available to colleges and
11 businesses for a fee, correct?

12 A. PTK makes the information that students release available
13 to the colleges and businesses that -- that -- if they want to.
14 I mean --

15 Q. PTK's terms and conditions talk about providing
16 information to business and college partners, correct?

17 A. Yes. In the terms and conditions, we tell the student,
18 when you join, your information will be shared with our
19 partners.

20 Q. But PTK doesn't disclose to any student member that they
21 are going to receive e-mails soliciting them from businesses,
22 correct?

23 A. They don't solicit. They are job offers. The partners
24 that we have on Connect are only for the purposes of offering
25 them jobs. They don't sell them things.

1 Q. And PTK doesn't disclose to any members that data is sold
2 to businesses or colleges, correct?

3 A. We don't call it selling, but in the terms and conditions,
4 it is very clear that it is going to be shared. That's the
5 word.

6 Q. But PTK doesn't disclose it's shared --

7 A. It does disclose. It's in the terms and conditions.

8 Q. But PTK doesn't disclose that it's sold in exchange for a
9 fee, correct?

10 A. It's not sold. It is shared.

11 Q. PTK doesn't disclose that the database is shared in
12 exchange for a fee, correct?

13 A. We don't tell the students what the sponsorship agreement
14 is because it is different for every college.

15 Q. You testified earlier that you want the colleges to have
16 access to the database so the students have more exposure; is
17 that right?

18 A. Yes, I think when a student joins, the number one reason
19 they join is to get their hands on those scholarships. If the
20 colleges are not allowed to communicate with them and tell them
21 how much it is, then the whole system doesn't work. That's
22 what it's for.

23 Q. But despite that PTK wants colleges to have access, the
24 students have exposure, PTK does not offer that data for free?

25 A. No, we don't offer -- we don't hand over data to colleges

1 without sponsorship for the students.

2 Q. You testified earlier that *Jackson Jambalaya* wrote an
3 article about this lawsuit; is that right?

4 A. No, they just published a release. I don't think there
5 was an article associated with it. They just published the
6 press release, just the flat press release.

7 Q. Do you know what a blog is?

8 A. Yeah. A blog is a news outlet.

9 Q. It's not a personal web blog?

10 A. What's your -- what are you talking about? Are you
11 talking about *Jackson Jambalaya*?

12 Q. I'm asking whether you understand a blog to be a personal
13 web log of information.

14 A. It depends on who is blogging. I don't know if it is
15 personal. If it's community -- I don't know what your question
16 is. I'm so sorry.

17 Q. And other than the *Jackson Jambalaya*, are you aware of any
18 media outlet that has published an article or done a story
19 about this lawsuit?

20 A. Yes, there are tons of them. CampusBuddy. I mean, we
21 went ad nauseum about people that have done stories on this
22 article.

23 Q. News sources?

24 A. News sources? I don't know if students consider --
25 CollegeBudget.com has a news article. I consider that news.

1 Q. The *Clarion Ledger* didn't cover this lawsuit ever, did it?

2 A. The *Clarion Ledger* here in Jackson? No, they did not.

3 Q. And you are not aware that any cable news network has
4 covered this --

5 A. No, but Jackson Jambalaya has more readers than the
6 *Clarion Ledger* does.

7 Q. You don't know that to be true?

8 A. Pretty sure.

9 Q. Upon what basis do you believe that the *Jackson Jambalaya*
10 blog has more viewers than the *Clarion Ledger*?

11 A. I don't know. I just assume it does because it is free.
12 *Jackson Jambalaya* is free, and the *Clarion Ledger* costs money,
13 so I just assume.

14 Q. You aren't aware of any local T.V. stations that have
15 covered this, are you?

16 A. No local T.V. stations I'm aware of, no.

17 Q. You submitted a declaration in connection with this
18 motion, correct?

19 A. Yes.

20 Q. And you signed that declaration on July 3rd?

21 A. I don't know what day I signed it. I'm so sorry.
22 Whatever date is at the top is probably when I signed it.

23 Q. I'm going to ask if this is a true and correct copy of
24 your declaration. I see that you are reviewing the first page.
25 Do you want to review the whole thing or can you answer that

1 question?

2 A. Can you just scroll through it, please. You don't have to
3 go that slow. Just help me. It should be 25 or so pages, if I
4 remember correctly. Yes, that looks right. Yes.

5 Q. It says it was executed on July 3rd.

6 A. July 3rd, then.

7 Q. Do you believe everything in the declaration was true and
8 correct as of July 3rd?

9 A. I would have not signed it.

10 Q. So on July 3rd, you verified everything in that
11 declaration?

12 A. Yes, I think so. I mean, it could have been -- I could
13 have signed it July 4th, I guess, or 5th or something. I don't
14 know, but I signed it.

15 Q. In the declaration, you discussed one of Honor Society's
16 articles that has the "Voice Of A College." Do you remember
17 that?

18 A. No. You will have to -- sorry. It's very -- a lot of
19 information there. Can you just put the page up that has that
20 on there?

21 Q. Fair request. Do you see paragraph 20?

22 A. Yes.

23 Q. And do you see you wrote "The AR articles are particularly
24 deceptive because many are written in the Voice of the
25 College"?

1 A. Yes.

2 Q. Did you verify that on the day you signed this
3 declaration?

4 A. Yes.

5 Q. Have you since reviewed any of the articles that are
6 discussed in this declaration to confirm that they still are
7 posted on the internet?

8 A. I have Googled myself a few times and the same stuff comes
9 up. I mean, it is five thousand pages. The Bible is 25 -- you
10 know, 1200 pages. So it's a lot to sit there and verify all of
11 this every single day.

12 Q. Have you seen any of the articles in the Voice of the
13 College since you signed the declaration?

14 A. I cannot sit here and tell you I've gone back through all
15 of this stuff. I would have to take another week to go back
16 through it.

17 Q. You testified earlier that you would normally be invited
18 to speak at graduations, but this year you weren't; is that
19 right?

20 A. No, I was invited to speak at one several months ago
21 before all of this stuff started. I was invited to speak at
22 one, which is unusual.

23 Q. Were you invited to speak at more?

24 A. I usually speak at a few more if I can. I can't -- they
25 all happen at the same time, so I can't always speak at every

1 one I am invited to, but I'm usually invited to more than one.

2 Q. Did you indicate earlier that you attribute the fact that
3 you weren't invited to more to Honor Society's articles?

4 A. I was just lamenting that my inbox from colleges is very
5 slow, if not nonexistent, after the FOIA request and after all
6 of this. They are afraid to talk to me.

7 Q. When invited to speak at colleges, the invitation would
8 come before June. Yes?

9 A. Not always. Not always. But the FOIA requests have been
10 going on for quite some time, but they would have come around
11 all of that time.

12 Q. So when speaking at a graduation, when do you generally
13 receive an invitation?

14 A. I don't know. I would have to look at my e-mail.

15 Q. The Honor Society articles were published in June, yes?

16 A. The FOIA requests, everything started months before that.
17 So all of it sort of spooked the colleges, I think, lots of
18 FOIA, tons.

19 Q. Not one college has contacted you to cancel a contract and
20 indicated it's because of Honor Society's articles, correct?

21 A. What contract?

22 Q. Any contract.

23 A. Canceling contracts that are in place? Are you talking
24 about -- I have had nonrenewals. Those are contracts for PTK
25 Connect. They have been nonrenewed at this time, many.

1 Q. You have had nonrenewals for PTK Connect?

2 A. Yes.

3 Q. And the customers on those, none of them have indicated
4 it's because of what Honor Society posted, correct?

5 A. I provided 20 names. I have provided a lot of information
6 of people who have turned their back on PTK in my declaration.

7 Q. Of those 20 names, none of them told you that they were
8 canceling because of Honor Society's statements on the
9 internet, correct?

10 A. I gave you 20 names, and that's just the tip of the
11 iceberg as to how many people probably know about all of this
12 stuff.

13 Q. I'm going to ask the question again.

14 A. My phone number is not available on the internet for these
15 students to, you know, let me just tell you.

16 Q. You are not aware of any student who canceled a membership
17 because of Honor Society's posts?

18 A. They call and say, No questions asked.

19 Q. So no questions were asked?

20 A. Look, you have plenty of names, of weird things that have
21 happened to Phi Theta Kappa since all of this mess has started.
22 We have lost revenue and all of that stuff.

23 Q. And of those names --

24 A. So you are going to sit here and say that this had no
25 impact? I will give you one more name --

1 Q. That's not the answer to my question. I'm asking whether
2 any of those names, any of the people who have canceled have
3 indicated to you in any --

4 A. They have not indicated to me that they didn't believe
5 because of that.

6 Q. They have no --

7 A. They haven't told me.

8 Q. No party who has canceled a membership has told you that
9 it was because of Honor Society's articles or other
10 communications, correct?

11 A. I'll give you one more name. Casey Holcomb, two days ago,
12 received a text message from Michael Moradian saying, I need to
13 talk to you about Lynn.

14 And she's a former employee, an honorary member of Phi
15 Theta Kappa, and she said she didn't want to talk to him. And
16 then he said, Why don't you Google Lynn and then get back with
17 me.

18 And so if you don't think "Googling Lynn" or Phi Theta
19 Kappa has been damaging just because --

20 Q. That's not my question. What is Casey's last name?

21 A. Holcomb.

22 Q. And Ms. Holcomb didn't cancel a contract with you,
23 correct?

24 A. Ms. Holcomb is a very prominent realtor in this community,
25 and her opinion of me matters.

1 Q. The question is whether she canceled a contract with you.

2 A. She didn't cancel a contract. She was a former employee.

3 Q. And Ms. Holcomb didn't indicate she was going to decline
4 to purchase any services --

5 A. She's not a student.

6 Q. My question isn't whether she was a student. It's whether
7 she indicated that she was going to decline to purchase a
8 service from PTK.

9 A. I have lost FOIA --

10 Q. That's not my question.

11 A. Casey Holcomb --

12 **THE COURT:** Listen to his question.

13 A. Casey Holcomb did not say that she was upset. She was
14 upset that we gave her personal information to Michael
15 Moradian. That's what she was upset about.

16 **BY MR. NEWMAN:**

17 Q. And as you sit here now, you can't think of a single
18 person or company that has communicated to you that it was
19 canceling a contract for not entering into a sale with PTK due
20 to Honor Society's articles or other communications, correct?

21 A. We haven't received a grant from the Woodward Hines
22 Foundation since the *Jackson Jambalaya* thing happen.

23 Q. That's not my question. Woodward Hines didn't indicate to
24 you that it was canceling a contract or not providing a grant
25 because of Honor Society, correct?

1 **COURT REPORTER:** I need you to slow down, please.

2 **MR. NEWMAN:** Thank you. I apologize.

3 A. I don't know why these people are pulling out. I'm
4 assuming it's because of this, but I'm not going to sit here
5 and tell you anything that I don't know. So they haven't told
6 me why they have left. But they are leaving in droves, and
7 they are leaving.

8 **BY MR. NEWMAN:**

9 Q. You testified it is an assumption.

10 A. I am testifying that it is logical, and that any normal
11 person, when you Google Phi Theta Kappa and get all of this
12 stuff, you are not going to join, you are not going to complete
13 your contract --

14 Q. That's not my question. You are testifying it's an
15 assumption. Yes? That's what you said?

16 A. I'm testifying --

17 **MR. POLAK:** Mischaracterizes prior testimony.

18 **THE COURT:** She said she assumed. Assumption is the
19 same as assume, at least from this point. If -- I understand
20 we both want to tell our stories, but if you will answer his
21 question, we can move on.

22 A. My answer to your question is that they have not told me
23 that's why they are leaving.

24 **BY MR. NEWMAN:**

25 Q. Thank you. You testified a volume of students have

1 canceled memberships?

2 A. I have listed names in my declaration of people that have
3 canceled memberships that have been members for years.

4 Q. And PTK didn't lose any money from those cancellations
5 because no money was due from those students, correct?

6 A. We lost \$80,000 in revenue from new members since this hit
7 the internet.

8 Q. But again, none of those losses, no one has indicated to
9 you it is from Honor Society's articles --

10 A. There is no way for them to indicate. There is no way for
11 them to indicate.

12 Q. You could ask.

13 A. Really? And they are going to answer the e-mail? Well,
14 maybe we need to do that, and we certainly will. But I don't
15 want to sit here and say no one has left because of whatever,
16 when --

17 Q. And a lot of the volume of students that canceled
18 memberships canceled before the June articles that Honor
19 Society posted, correct?

20 A. It has been ongoing.

21 Q. So if the cancellation occurred before June, it couldn't
22 have been due to the articles here, correct?

23 A. I don't know when the dates came in. They are listed in
24 here, and it was after all of this happened.

25 Q. You testified earlier that employees have asked if they

1 should quit their jobs; is that right?

2 A. Yes.

3 Q. Which employees?

4 A. Fredrica Tyes.

5 **THE COURT:** Do you know how to spell her name?

6 **THE WITNESS:** F-R-E-D-R-I-C-K-A -- Fredrica -- no,

7 C-A, not K. Tyes, T-Y-E-S.

8 **BY MR. NEWMAN:**

9 Q. T-Y-E-S?

10 A. Yes.

11 Q. Did Fredrica Tyes quit her job?

12 A. No, I told her not to.

13 Q. Any other employees ask if they should quit their job?

14 A. No, not me directly but their supervisors, so I will have
15 to collect names for you. I supervise Fredrica. That's the
16 person that came to me because I'm her supervisor.

17 Q. Rod Risley is the previous CEO of PTK; is that right?

18 A. Yes.

19 Q. And at one point, you reported to Rod Risley?

20 A. I did.

21 Q. And he was accused of sexually harassing a chapter
22 advisor; is that right?

23 A. No, he was not.

24 Q. Rod Risley was not accused of sexually harassing anybody?

25 A. You said chapter advisor, and he was not accused of

1 harassing a chapter advisor.

2 Q. Thank you for the clarification. He was accused of
3 harassing PTK employees or chapter employees, correct?

4 A. Chapter employees, no.

5 Q. Was he accused of harassing Toni Marek?

6 A. He was accused by Toni Marek and Rachel Reeck of sexual
7 harassment from them.

8 Q. What was Toni Marek's relation to PTK at the time?

9 A. At the time of the harassment, she had been removed from
10 office and was not a member -- not a member of the chapter that
11 she was in. She was with her chapter, but she wasn't an
12 officer anymore.

13 Q. Do you know how Rod Risley had the opportunity to engage
14 in conduct that was alleged as sexual harassment if she was no
15 longer a member?

16 A. What? I was not around. I have never met Toni Marek in
17 her capacity as a member. I haven't ever spoken directly with
18 Toni Marek, and I wasn't around Toni Marek. I have met Rachel
19 Reeck face to face but not Toni Marek.

20 Q. And Rachel Reeck accused Rod Risley of sexual harassment,
21 correct?

22 A. The two of them together, I think. I think -- I don't
23 know if they did it at the same time. I would have to go back
24 and look.

25 Q. And Rachel Reeck complained to you?

1 A. No.

2 Q. You spoke to Rachel Reeck --

3 A. I spoke to Rachel Reeck a couple of years ago. This
4 happened ten years ago. I have met her.

5 Q. And she asked for an apology from PTK; is that correct?

6 A. I don't remember the conversation of her asking for an
7 apology.

8 Q. PTK has never apologized to Toni Marek or Rachel Reeck?

9 A. For what? Listen, I know where you are going with this.
10 I am a woman, I have a daughter, and if you think for one
11 minute that if we were able to get to the bottom of the "he
12 said/she said," we would have done something about it. So if
13 you could please move on from that. It happened ten years ago.
14 But I have absolutely no information for you about it except
15 for we couldn't figure it out, or we would have done something.

16 Q. That's not my question.

17 **THE COURT:** Hold on. He is entitled to ask his
18 question. Again, allow him to ask his question and you can
19 answer that question.

20 **BY MR. NEWMAN:**

21 Q. I would like to turn your attention to the Exhibit 17 that
22 PTK filed. It is Exhibit 17 to PTK. You discussed this
23 exhibit with your lawyer earlier today; is that right?

24 A. Yes.

25 Q. And you testified that the image of you with Rod Risley is

1 not accurate?

2 A. I've never seen it before.

3 Q. You believe it is photoshopped?

4 A. I believe it is strange and it's awkward and I've never
5 seen it before.

6 Q. But you've appeared with Mr. Risley at various PTK events
7 when he was president, correct?

8 A. I don't remember. It's been ten years. Very seldom.

9 **MR. NEWMAN:** Can we show the YouTube clip.

10 **MR. POLAK:** Excuse me.

11 **THE WITNESS:** YouTube clip?

12 **MR. POLAK:** Have we seen a YouTube clip?

13 **MR. NEWMAN:** This is for impeachment purposes, which
14 I can do for any purpose.

15 **MR. POLAK:** Has it been produced in discovery?

16 **MR. NEWMAN:** It has not because the testimony just
17 came out today.

18 **THE COURT:** What is this you --

19 **MR. NEWMAN:** This is a YouTube video showing
20 Dr. Tincher-Ladner with Rod Risley, and it shows that there was
21 no photoshopping. This is a real photo taken from a video that
22 PTK created with Dr. Tincher-Ladner and Rod Risley. We don't
23 want the record to reflect an allegation of photoshopping and
24 fraud when that didn't occur.

25 **MR. POLAK:** If that's the case, Your Honor, then I

1 think it really just becomes then a matter of whether they
2 selected the one frame out of a very long one to make it
3 look --

4 **THE COURT:** I'll look at the video.

5 **MR. POLAK:** I don't know that we need to sit here and
6 watch it.

7 **THE COURT:** How long is it?

8 **MR. NEWMAN:** Thirty-five seconds.

9 **THE COURT:** Okay.

10 **THE WITNESS:** Who published this video?

11 **(VIDEO PLAYED)**

12 A. This is a dream.

13 **BY MR. NEWMAN:**

14 Q. Do you remember that event?

15 A. I remember us presenting our 91-percent student success
16 rates at a number of conferences. I think this is the one we
17 did do it together.

18 Q. And you saw in that video --

19 A. What year is this video? 2015? Okay.

20 Q. And you saw in that video that Mr. Risley was standing in
21 one place and you were moving around?

22 A. That video is a video. What you have is a photo.

23 Q. I'm just asking did you see that. Did you see that?

24 A. I saw it, yeah.

25 Q. And you saw that you moved close to Rod Risley and stood

1 there for a moment?

2 A. No, I think I was in motion the whole time.

3 Q. Okay. And I would like to turn your attention back to
4 PTK's Exhibit 17. The image that you see in Exhibit 17, can
5 you tell now that that comes from the video that you just
6 watched?

7 A. It looks like it does, yeah. It comes from the video from
8 2015 with a 2024 publication.

9 Q. So it probably wasn't photoshopped?

10 A. I don't know. Like I said, I had never seen the photo
11 before.

12 **MR. NEWMAN:** I have no further questions at this
13 time. Thank you.

14 **MR. POLAK:** I have just four quick hits, Your Honor.

15 **THE COURT:** Okay.

16 **REDIRECT EXAMINATION**

17 **BY MR. POLAK:**

18 Q. Dr. Tincher-Ladner, the first thing I would like to show
19 you -- and I will go ahead and use the Elmo here.

20 **THE COURT:** You can lay it down, I think. It's going
21 to take a second. We are loading it up here. We are
22 transferring it. She is.

23 **MR. POLAK:** Yes.

24 **BY MR. POLAK:**

25 Q. You were asked before about a declaration that you gave

1 that was signed July 3rd. You tendered a supplemental
2 declaration as well, right?

3 A. Okay. Yes, I did, just yesterday.

4 Q. It was yesterday, and it was filed yesterday, and it was
5 filed in connection with our reply brief to what they filed on
6 Wednesday, right?

7 A. Yes.

8 Q. And in it you provided a number of different facts,
9 correct?

10 A. Yes.

11 Q. And I'm not going to go through the whole thing, but you
12 were asked at length by counsel about -- I'm looking at page 4
13 of your declaration, of your supplemental declaration, and
14 paragraph 13. Isn't it true in the supplemental declaration
15 that you provided your math about how the top ten percent was
16 calculated?

17 A. Yes, for many years.

18 Q. We are not going to rehash all of that. It's in the
19 declaration. But counsel had also suggested that you had not
20 produced documents -- well, Phi Theta Kappa had not produced
21 documents proving the math. And here we have a table in
22 paragraph 13. Does this table set out the math that you did
23 for -- for your membership?

24 A. Yes.

25 Q. And we see out to the right -- I'm sorry, on this column

1 here, "Document," there are PTK Bates numbers.

2 A. Yes.

3 Q. And I'll represent to the Court that it was suggested that
4 those documents had not been produced. Those were produced on
5 June 25th.

6 We also see this is for 2015, 2016, 2017. And the
7 percentages out to the right are 4.3, 4.6, 4.4. Are those
8 percentages more or less than 10 percent?

9 A. They are very much less.

10 Q. That table continues on on the next page, continuing on in
11 paragraph 13, for the years 2018 all the way to 2022?

12 A. Yes.

13 Q. That was all information you were able to calculate doing
14 your math?

15 A. Yes. The federal government takes a year and a half to
16 get the numbers published on their website that I use for these
17 calculations, so they had to end at 2022 because that's the
18 latest publication I have out there to work with.

19 Q. Again, I don't want to belabor the point. The Court has
20 the declarations. But isn't it true in your declaration, you
21 provide not just those tables, but you provide an explanation
22 as to why their math has some fundamental calculation errors?

23 A. It does.

24 Q. And you have already identified, I think, some. There
25 were things like the denominator problem?

1 A. Right. They were not -- from what little bit I saw in the
2 exhibit book, when they asked for the FOIA request of the
3 colleges, they were not asking for all the students. They were
4 only asking in some of them I think for full-time students, and
5 then for students that only had 12 hours, and they did not take
6 into account the large numbers of students that unfortunately
7 drop out of community colleges in the first year. They did not
8 account for the number of students taking developmental ed
9 remediation classes. They did not account for students that
10 are in short-term work force development problems that are
11 noncredit.

12 The community college mission serves so many more
13 students. So when we say you are in the top ten percent on
14 your campus, you are in the top ten percent on your campus,
15 because there are so many students that unfortunately -- at the
16 end of the spring semester when you're doing FOIA requests, a
17 lot of them have unfortunately dropped out, and you need to
18 take more time in your FOIA to explain what "all students"
19 means to a community college.

20 Q. Thank you.

21 **THE COURT:** I mean, what does all students mean?

22 **THE WITNESS:** All students means --

23 **THE COURT:** Anybody who is enrolled?

24 **THE WITNESS:** Yeah, anyone who is going to this
25 college.

1 **THE COURT:** Okay.

2 **BY MR. POLAK:**

3 Q. And at any time in any of your advertising or public
4 statements about this top ten percent number, as you can
5 remember it, was it limited to full-time students?

6 A. Never. We have lots of part-time students. The president
7 of Phi Theta Kappa today, the student president, is a part-time
8 student. I mean, we have part-time students.

9 We invite anyone who has the right GPA, but I can only
10 wish that 55 percent of community college students had a 3.5 or
11 higher. A lot more people would go to community colleges if
12 that were true. It just can't be true or they would be filled
13 with students, and they are not. They drop out, unfortunately.
14 They have jobs. They are a very challenged part of society
15 because they are low income, typically. And to sit there and
16 say 55 percent of students have above 3.5 is absolutely -- it
17 doesn't agree with the nightly news or any of the news on
18 community colleges.

19 Q. So when you see all of these statements and accusations
20 that are in these five thousand or so websites and their social
21 media saying, PTK lies when it says top ten percent, when you
22 look at that, are their statements based on correct math?

23 A. No, their math is so bad because they know nothing about
24 community college students and the type of institutions they
25 are. I spent 35 years study -- I have a Ph.D. in the way these

1 colleges work. And it's just when you don't account for all
2 the students, then you are inflating your percentages, and your
3 math is so bad that you need to say, how many students do have
4 coming to your college for any reason, because we say students
5 on campus. We don't say students in a program. They may be in
6 developmental ed classes, and maybe their PELL grant will help
7 them with those classes, but they don't count toward their
8 enrollment numbers in Phi Theta Kappa. It is just a smaller
9 segment of students than they are trying to study in their
10 FOIA.

11 Q. This is Defendant's Exhibit 7, first page of that exhibit
12 that we were talking about before. Based on your testimony, I
13 may have erred in agreeing to its use, but I want to show a
14 couple of things to you. When we scroll in here and we look at
15 the bottom of this document, we see a couple of things. One is
16 a phone number. Is Phi Theta Kappa's phone number
17 (601)000-0000?

18 A. No, it's not.

19 Q. We see also -- let me see if I can focus this a little
20 better. There we go. Do you see an e-mail address there? It
21 says, Inquires@PTK.org. Do you have an e-mail address like
22 that that you use for PTK?

23 A. I don't know. I mean, the only one I know of that we
24 typically have on these types of things is called Help@PTK.org.
25 That's kind of the one we see most often.

1 Q. But even if it was supposed to be something about an
2 inquiry or an inquirization, you wouldn't use inquires. It
3 would be inquiries@PTK.org.

4 A. I mean, I don't know. I would have to look in the
5 database.

6 Q. And I get that, and you have said that, but I point these
7 two things out to ask you this question. You already told me
8 and you had told the Court that you have some serious questions
9 about the authenticity of this document, but we have now looked
10 at a couple of other things here. Does that add to your
11 suspicion about this document?

12 A. Yeah. It just makes me want to verify what is coming out
13 of the system and why would Honor Society have a student's
14 document without authentication from the student.

15 Q. Defendant's Exhibit 37 is also a document I want to show
16 you, and this is page number 3 from theirs. I'm just going to
17 use the Elmo here. You are asked on cross-examination about
18 whether or not you are selling data without the student's
19 knowledge or permission. You have already talked a lot about
20 whether it was a sale or not, but I want to ask you a question
21 about whether PTK obtained student consent.

22 This Exhibit 37 is -- are the terms and conditions on your
23 website, right?

24 A. Right.

25 Q. Are these also the terms and conditions for membership in

1 the organization?

2 A. Yeah. When they join, that same document that's linked at
3 the bottom of our website, they have to agree to it or they
4 can't be a member.

5 Q. So one of the things that you ask them to agree to are the
6 terms that are contained in paragraph number 5 on page 3, "Five
7 Rights You Grant Us." Actually, I think it is paragraph 5,
8 "Rights That You Grant Us."

9 Let's look at the first paragraph. "In consideration of
10 the rights granted to you under the agreement, you grant us the
11 right to: One, process your membership and provide access to
12 your member benefits; two, to provide promotion of our chapter
13 activities, store merchandise, advertising, and other
14 information to you; and three" -- and this is the one that is
15 important -- "three, to allow our university and business
16 partners to do the same."

17 A. Yes.

18 Q. Is this the provision that you were talking about during
19 your cross-examination where you told Mr. Newman and this Court
20 that you actually do get their consent --

21 A. Yes.

22 Q. -- to use their name and e-mail address for the PTK
23 Connect program, for example?

24 A. Yes.

25 Q. So should there be any question as to whether or not

1 students, when they sign up for PTK, give consent for
2 participation in PTK Connect?

3 A. No question whatsoever, because once they agree to this,
4 they have to go in -- it will not even let them pass this point
5 if they don't agree to this. But they can, once they agree to
6 it, they can go into their profile and they can say no, no, no,
7 and it will leave them out, but that's the only way.

8 Q. But it's an agreement in the beginning, and then later on,
9 if they choose to, if they aren't getting the benefit they like
10 or whatever, they can go ahead and turn that off?

11 A. Yes. And we leave it on the website too because they can
12 refer to it, because once they go through the accept mem
13 process, they can't see it anymore. So we publish it front and
14 center on the website so they always know what it is.

15 Q. Are these terms and conditions secret behind some
16 firewall?

17 A. No, no, they are on the front home page. Everybody can
18 get to this document.

19 Q. So Mr. Moradian or his team, when they were preparing
20 these five thousand pages of websites, accusing you of selling,
21 without consent, student data, they had access to that.

22 A. Everybody can see this. It is very important that
23 students know that they are releasing their data.

24 **THE COURT:** You said that is Defendant's Exhibit 37?

25 **MR. POLAK:** Defendant's Exhibit 37, Your Honor. That

1 is a part --

2 **THE COURT:** Is that part of a declaration or
3 something?

4 **MR. POLAK:** It is attached to either Mr. Linke's --
5 I'm sorry. It is attached to Mr. Moradian's declaration as
6 Exhibit 37. We did not proffer that, but they did and we are
7 talking about it.

8 **THE COURT:** Oh, okay.

9 **MR. NEWMAN:** We don't dispute it, if that's the
10 question.

11 **MR. POLAK:** Thank you, Your Honor. Pass the witness.
12 Actually, I think that is it.

13 **MR. NEWMAN:** A couple of points.

14 **THE COURT:** On recross?

15 **MR. NEWMAN:** Yes, Your Honor.

16 **RECROSS--EXAMINATION**

17 **BY MR. NEWMAN:**

18 Q. I would like to turn your attention --

19 **THE COURT:** Hold on. You know this is unusual,
20 right?

21 **MR. NEWMAN:** May I?

22 **THE COURT:** Unusual, right?

23 **MR. NEWMAN:** Yes, Your Honor. May I ask a couple of
24 questions about two points?

25 **THE COURT:** You may.

1 **MR. NEWMAN:** Thank you, Your Honor.

2 **BY MR. NEWMAN:**

3 Q. Turning your attention to the declaration, what you
4 testified about top ten percent -- do you remember or do you
5 want to read it?

6 A. I'm pretty familiar with it.

7 Q. So you testified about the percent of students at the
8 school who are invited to membership; is that right?

9 A. That is correct.

10 Q. But not the number of students who fall within a certain
11 GPA, correct?

12 A. The GPA criteria are already looked at when they provide
13 us the members.

14 Q. One of few criteria. Yes?

15 A. Yes.

16 Q. And you testified that there's other criteria other than
17 grade, correct?

18 A. There is you've been in college a hot minute, yes.

19 Q. And you testified the number of students shown in response
20 to the FOIA requests doesn't include all of the students; is
21 that right?

22 A. I have not reviewed the hundreds and hundreds of FOIA
23 requests. I don't even know if we have all of them. I would
24 be so happy to go through each one, or whatever, but again, I
25 don't know once --

1 Q. I'm asking about the testimony you just provided a few
2 minutes ago.

3 A. To just the cross or to you?

4 Q. To Mr. Polak.

5 A. Oh, okay.

6 Q. And I'm asking whether your testimony was that the number
7 of students is larger than the community colleges reported in
8 response to FOIA requests?

9 A. I don't know.

10 Q. So that wasn't your testimony?

11 A. I mean, it would have to be because what he asked them was
12 for full-time students. He asked them only for students who
13 all had above 12 hours of credit. He left out anyone in a
14 developmental education program. I mean, I tried to tell you
15 the kinds of students you are leaving off your calculation.

16 Q. So more students would be invited to PTK than are shown?

17 A. No, more students are not invited. Your denominator is
18 wrong. I don't know about your numerator.

19 Another thing that you need to think about with these FOIA
20 requests is we are going to invite a student several semesters.
21 So you have got all kinds of students coming and going and
22 dropping out during those semesters. So when you look at it
23 for just one semester, we look at it all year long, because
24 it's -- you are counting my student differently than I'm
25 counting them from an annual basis.

1 Q. Okay. So can we look at Exhibit 37, the terms and
2 conditions, please?

3 **THE COURT:** You need to show it to her because he put
4 it on the Elmo. Y'all need to put it on the screen.

5 A. It's Exhibit 37.

6 **THE COURT:** You'll have to come back over.

7 **MR. POLAK:** I can just give you my copy if you want
8 to use the Elmo, to keep things moving.

9 **BY MR. NEWMAN:**

10 Q. You were looking at paragraph 5, yes?

11 A. Number 5, yes.

12 Q. Section 5, "Rights You Grant Us." And members grant the
13 right to provide promotion of chapter activities, store
14 merchandise, advertising, and other information, and to allow
15 university and business partners to do the same, correct?

16 A. Right.

17 Q. And the same is providing chapter activities?

18 A. No, the same meaning give them ability to contact you,
19 like we're -- the second one is about us e-mailing them things,
20 and the third one is about our partners being able to e-mail
21 them things.

22 Q. But it doesn't say that in the terms and conditions. You
23 agree with that?

24 A. Well, pretty much, unless you know of a student that
25 doesn't understand what this means, this is what it means to us

1 when we wrote it and sent it through legal.

2 Q. And there is no disclosure in these terms and conditions
3 or otherwise to students that PTK accepts a fee for the
4 transfer of the student data to businesses, correct?

5 A. Why would I tell a student about a fee that's not coming
6 from them?

7 Q. That's not the question.

8 A. We don't have it in here because it doesn't need to be in
9 here.

10 **MR. NEWMAN:** Thank you.

11 **THE COURT:** I need you to stay there for a second
12 because I do have a couple of questions, and I know it's going
13 to call for some sort of follow-up questions. So I just have a
14 couple of questions.

15 **THE WITNESS:** It doesn't matter. However long you
16 need me.

17 **THE COURT:** I'm still trying to get a clear
18 understanding of when do you -- when does PTK determine the
19 number of students to base the denominator -- I mean, because
20 you have been talking about a numerator and a denominator. The
21 denominator is all students, and all students is everybody who
22 either touches the campus or is enrolled in the school, period.

23 **THE WITNESS:** Period. It is everybody is in the
24 denominator, because we say students on campus in the
25 publications.

1 **THE COURT:** Is it limited to on campus or students
2 who are enrolled?

3 **THE WITNESS:** Students that are enrolled in the
4 college. You know, they might be all online or -- yeah, online
5 campus is a campus too.

6 **THE COURT:** Okay. So if I'm at Hinds Community
7 College in Raymond, if I'm enrolled in Hinds, I may be enrolled
8 in the welding program or I may be some other type of student.
9 I'm just trying to figure out, when do you get your number,
10 because it seems to me that one of the disconnects is, maybe,
11 when you get your number and when the FOIA request was made,
12 and what was the response to the FOIA request. I don't know --
13 I don't know what the FOIA request looks like. I don't know
14 what numbers it asked for. But what I'm trying to figure out
15 is, I think you said there's a lapse in time sometimes before
16 the federal government sort of provides the number of students
17 that were in Hinds Community College, for example. So if
18 you -- does PTK -- school will start in August of 2024.

19 **THE WITNESS:** Um-hm.

20 **THE COURT:** When does PTK reach out to the -- I guess
21 because you might have a contract with -- you might have an
22 agreement with the college already, but I'm just trying to
23 figure out when do you get your numbers, or when do you request
24 your numbers? What is that denominator? You know, how is that
25 denominator -- at what point in the school semester is that

1 denominator determined, because I know it can change because --

2 **THE WITNESS:** It does.

3 **THE COURT:** -- because people enroll in school in
4 August, and some drop out in October for a whole lot of
5 reasons.

6 **THE WITNESS:** Yes.

7 **THE COURT:** Some graduate in December. I'm just
8 trying to figure out when PTK gets its numbers.

9 **THE WITNESS:** What we do is we try not to bother the
10 colleges. They have a lot to do. But the colleges are
11 required to file their numbers with the federal government to
12 maintain their status of Pell grants. There are two kinds of
13 numbers they give the feds. One is an unduplicated fall
14 enrollment, and another is an unduplicated annual enrollment.
15 So we are talking about fall, spring and summer.

16 At the end of summer, every single community college in
17 the country is required to tell the federal government the
18 unduplicated numbers of students that were enrolled at that
19 college in credit programs. Now, the AACCC keeps a database of
20 the noncredit students. So I have to use two sources to add
21 together to get the denominator.

22 **THE COURT:** And then when does PTK make that decision
23 about, of this denominator, this is the top ten percent?

24 **THE WITNESS:** Yes, the numerator is the students we
25 invited. So we divide the numbers and get a percentage. And

1 you saw an aggregate of the whole year on that declaration
2 supplemental. But we are saying they are in the top ten
3 percent because the numerator is less than ten percent.

4 **THE COURT:** Okay.

5 **THE WITNESS:** That's the way we do it.

6 **THE COURT:** Okay. Now, I want to turn your
7 attention -- I just have a couple more questions. You have
8 before you the book of exhibits, and I want to just ask you
9 about Exhibit 35. You've got the book in front of you. And I
10 think everybody else has it.

11 **MR. POLAK:** Plaintiffs or defendants, Your Honor?

12 **THE COURT:** Plaintiffs. I'm sorry.

13 **THE WITNESS:** Okay. I've got it.

14 **THE COURT:** This was a document, "College Budget
15 Articles and Reviews for Students." I just want to make sure
16 you are looking at the same one I'm looking at.

17 **THE WITNESS:** Yes, Your Honor.

18 **THE COURT:** There were several questions that were
19 asked about that particular document. And I think Mr. Polak
20 talked about the false advertising and the attempt at
21 monopolization highlight the alleged claims against
22 Tincher-Ladner. On the right-hand side of that document are
23 Greek -- I assume these are -- do you know from that document
24 what these are? I was assuming it might be Greek -- I guess
25 the school -- do you know what that is? I'm just asking.

1 **THE WITNESS:** I'm thinking, based on visiting this
2 website, those are all the other honor societies in the
3 country, I believe.

4 **THE COURT:** Oh, the other honor societies in the
5 country?

6 **THE WITNESS:** I believe. That would be a --

7 **THE COURT:** Okay. I recognize Alpha Kappa Mu.

8 **THE WITNESS:** I hope that is not our chapters. Let's
9 just pray.

10 **THE COURT:** Okay. It's not your chapters.

11 **THE WITNESS:** Praying.

12 **THE COURT:** Okay. Well, good. That's what I needed
13 to know. These are not the chapters but may be other honor
14 societies.

15 **THE WITNESS:** I think so, yes.

16 **THE COURT:** Yeah, Alpha Lambda Delta is definitely an
17 honor society.

18 **THE WITNESS:** We do have an Alpha Lambda Delta, but
19 that's a different one.

20 **THE COURT:** Okay. Starting with the plaintiff, any
21 follow-up based on the two questions I asked?

22 **MR. POLAK:** No, Your Honor. Thank you.

23 **THE COURT:** Turning to the other side, any follow-up?

24 **MR. NEWMAN:** No, Your Honor. Thank you.

25 **THE COURT:** Dr. Tincher-Ladner, you may step down.

1 We are going to take a 15-minute break and find out where we
2 are from this point.

3 (RECESS TAKEN AT 3:34 P.M. UNTIL 3:43 P.M.)

4 THE COURT: The parties may have expected
5 Dr. Tincher-Ladner to be on the stand as long as she was, but I
6 did not think so originally. I know we have Mr. Moradian, who
7 is slated to testify, and I suspect his testimony will be about
8 that long as well. I don't know. I mean, I suspect it will
9 be. But I don't want to ruin your Friday or your Saturday in
10 this way, so we need to figure out what's the stopping off
11 point today and figuring out when we may pick back up on this.
12 I realize the parties and some of the lawyers are from out of
13 state, but let's talk about when we try to resume this.

14 MR. NEWMAN: Your Honor just indicated graciously
15 that the Court doesn't wish to ruin or Friday or Saturday, but
16 I'm wondering, because we traveled all of this way, whether
17 Saturday might be an option.

18 THE COURT: No.

19 MR. NEWMAN: Thank you. Just wanted to confirm.

20 THE COURT: Saturday is not an option, and the Court
21 has other -- I'm out of town -- I've got stuff -- I'll be in
22 Washington Monday, and I'm leaving before Monday to be there.

23 MR. POLAK: I think certainly we can complete the
24 cross-examination by 5:00, 5:10, I hope, but I think the bigger
25 question isn't what we get done today, it is when it is that we

1 are going to get back together again. And I think it would
2 help us to know when it is that you have clearance on your
3 schedule next.

4 **THE COURT:** And that I don't know yet. The trial
5 that I had to start begins on the 29th, but I have another
6 matter the week of the 22nd. The big trial that I was talking
7 about starts on the 29th. But I could not do it the week of
8 the 22nd because I have another hearing scheduled to begin on
9 the 22nd. The 29th is becoming -- the length of that trial
10 is -- I won't know until after -- again, I know one defendant
11 is going away next week, possibly, but I don't know how that
12 affects the entire case. Until we close out that proceeding on
13 Tuesday, we might not have a better idea because we are
14 supposed to follow up later in the day with a pretrial
15 conference with the remaining parties.

16 **MR. POLAK:** I don't know if this would be acceptable
17 to Mr. Newman, but I am going to suggest it anyway and see if
18 it has any legs.

19 You got to hear from Dr. Tincher-Ladner today. While I
20 think my cross will be informative and persuasive, I also think
21 that there is sufficient information in the record for you to
22 rule. This is of extreme immediate importance to PTK. And I
23 would suggest that maybe what we could do is rely on the record
24 as it exists right now, objections are what objections are, and
25 we could schedule on next week at your convenience a zoom call,

1 two hours, however long it is that you have in your schedule.
2 We will work out the time limits between ourselves, and the
3 parties could make the arguments that they need to make.

4 And my guess is, inherent in those arguments are going to
5 be probably the very same things that we would be pointing out
6 to you on cross-examination and on direct examination. You
7 have a very long declaration from Mr. Moradian. I feel
8 confident -- Mr. Wallace is going to be doing most of the
9 arguing -- he will be able to make the points that need to be
10 made on that.

11 I think you will recall we are not the ones that asked for
12 the evidentiary hearing. We were ready to move on the papers.

13 I have an argument just about that. I don't know whether
14 that is going to be acceptable to Mr. Newman. I'm going to
15 stop talking and let him respond, but I do think that under the
16 circumstances, it is a very reasonable way for us to approach
17 it, unless what they are willing to do is to take down
18 everything while it is that we wait to have our next hearing.
19 And that would be the alternative, that some sort of TRO, based
20 on the evidence you have heard, would be in place by agreement
21 to take the stuff down. They are not admitting anything in
22 taking it down. It is just a way for us to get through the
23 process without blowing up the process.

24 **THE COURT:** Will taking it down, Mr. Polak, do
25 anything about what is out there now or how it could be

1 retrieved? When you say take it down, if they took whatever
2 down you are talking about taking down, what will that do with
3 persons who put in their Bing or Google or Yahoo search Phi
4 Theta Kappa or Lynn Tincher-Ladner? I mean, when you say take
5 it down, what effect does that have with -- if they agree to
6 take whatever you are talking about, take it down, what does
7 that do with the --

8 **MR. POLAK:** With the search engine?

9 **THE COURT:** -- with the search engine.

10 **MR. POLAK:** That's an excellent question. And I'm
11 going to -- unless one of my techy people here tells me I'm
12 wrong -- if they shut down all five thousand websites -- in
13 other words, the websites that we are talking about, they put
14 these things on the internet in what appears to us to have been
15 within a matter of days. They can take them down just as
16 easily. I think if you turn the off switch of the site so it
17 is no longer viewable on the internet, it is literally that
18 easy, then no one is going to see it. Am I right on that?

19 **DR. TINCHER-LADNER:** It would take a few weeks for
20 the cache to --

21 **MR. POLAK:** Yeah, but if the cache would be unique to
22 each of the personal users, so only if they searched for
23 that would it pop up again --

24 **MR. NEWMAN:** Your Honor, may I be heard?

25 **THE COURT:** You will be heard. Trust me, I'm very

1 sensitive to the First Amendment stuff and all of that kind of
2 stuff you argued in your brief. You will be heard. You will
3 be heard.

4 **MR. POLAK:** What I'm hearing is that if they flip --
5 there is literally an off button that you can press. It is
6 probably more technical than that. But you can flick the
7 switch. Just like we turned the lights on and off earlier, you
8 can turn off the switch for those websites. It is going to
9 take a little bit of effort for Mr. Moradian, but that would
10 allow us to, I think, to have comfort while it is that we try
11 to continue the hearing, whenever it might be.

12 Alternatively, I'm fine with the other way as well, so
13 long as we can have an argument with you next week. And I
14 fully appreciate your schedule, Your Honor, and I don't want to
15 impose on that with this, but I think you also can tell from
16 the testimony of Dr. Tincher-Ladner, this is not only important
17 to PTK, but it is important to her personally. And we are
18 inching very closely to no longer being in summer invitation
19 season but getting into real invitation season. And the risk
20 of harm here is significant. And if we go -- I mean, literally
21 there is a point in our future, and I don't know that we have
22 crossed it already, but there is a point in the future that is
23 the point in overturn.

24 **THE COURT:** The one question I failed to ask
25 Dr. Tincher-Ladner, but the parties know this too, does -- has

1 Dr. Ladner made any claims against -- excuse me, against Honor
2 Society in her personal capacity in this matter, no defamation,
3 no any misappropriation of likeness in image? I'm just asking.

4 **MR. POLAK:** Not yet, but as you know, the history in
5 this case procedurally has had kind of a tortured past. We
6 were thinking we were going straight to trial and that we would
7 be trying the case this year. We have all of these new claims.
8 They were asking for an extension of time just last week. What
9 we have tried to do here is to avoid adding new claims into the
10 mix and instead relying on the existing claims asserted by PTK
11 for the relief that we are asking for here, as well as the
12 inherent power of the Court to sanction and control parties
13 that are within its jurisdiction.

14 Now, we could go assert claims, and I'm not telling you
15 that those claims won't be asserted in the future, but I
16 remember we had a conversation similar to this at the last
17 hearing, and you were asking the parties about when they were
18 going to -- because they had indicated they were going to be
19 amending their claims. You admonished Honor Society, Don't go
20 filing those claims in California. I don't want it all tried
21 in this action.

22 I don't want to jeopardize the June date that we have next
23 year. It seems like an eternity from now, but it's a year from
24 now. But with what's going on and we see here in the
25 ever-escalating efforts by them, we have got to get some

1 relief.

2 But the answer to your question is, do we have present
3 claims? The answer is, not directly from Dr. Tincher-Ladner,
4 but I can't tell you that that is off the table eventually, but
5 we are very mindful of this Court's order, and we don't want --
6 well, scheduling order, and we don't want to mess that up.

7 **THE COURT:** All right. I will hear from you.

8 **MR. NEWMAN:** Your Honor, it would be fundamentally
9 unfair to allow PTK to present its witness and then leave the
10 record without us presenting our witness. And this was
11 supposed to be an evidentiary hearing. I suggested a time
12 limit this morning because I want to avoid that unfairness.
13 But we should have the right to examine our witness just like
14 they did before the Court comes to any conclusions.

15 **THE COURT:** Yeah, I mean, you would have your right.
16 I mean -- right. I mean, that --

17 **MR. NEWMAN:** I would suggest the Court shouldn't be
18 entering any interim orders based upon testimony from one side
19 and not the other.

20 **THE COURT:** Can everybody be back here on the 17th?
21 I apologize. It is next Wednesday.

22 **MR. WALLACE:** We're clear over here, Judge.

23 **MR. NEWMAN:** Yes, Your Honor.

24 **THE COURT:** All right. I'm going to have to step
25 down. I have got to check on a scheduling issue about the

1 17th. I know it will be the 17th. I'm just trying to figure
2 out what time we will be able to start. On that day, we will
3 go until we end. And I know that persons who have -- well, I
4 know there's these fundamental arguments, and hopefully you
5 will have that opportunity too, although the briefs are well
6 done. Just stand down for a minute.

7 **(RECESS TAKEN AT 4:15 P.M. UNTIL 4:30 P.M.)**

8 **THE COURT:** We've reached out -- I had another matter
9 set for the 17th. We have reached out to those lawyers. They
10 respect the summer Fridays, so we just reached out to them.
11 They are gone. But they have a hearing that's currently set at
12 9:30, and I'm trying to get them to agree to continue it.

13 First of all, I've already changed the time of their
14 hearing to 8:30. I suspect it to be done by 10:30, possibly.
15 So I'm going to give you all a 10:30 time, but you need to be
16 open to start earlier because you may get an e-mail from our
17 chambers over the weekend or Monday about starting as early as
18 we started today, 8:30 or 9, and then we will be able to --
19 that's the only hearing I have, I think, on that day. So
20 hopefully we will be able to get all the testimony in that we
21 need and even all the arguments that the parties might need,
22 and I apologize to you all, but I appreciate you accommodating
23 my schedule. I know it is taxing on everybody, but I do want
24 everybody to be heard and to be considered. Well, you were
25 going to be considered whether you were heard or not, but I

1 want everybody to be heard. So we will pick back up then on
2 that date. Is there anything else we need to take care of
3 before then?

4 **MR. NEWMAN:** Your Honor, I'm very grateful that the
5 Court is accommodating us. And because of travel, I just want
6 to note, not that it really matters, that we really appreciate
7 it if we could start at 8:30, because it allows us to get out
8 earlier. But, of course, the Court's schedule is what matters,
9 and we will accommodate --

10 **THE COURT:** Oh, I'm trying to get you that earlier
11 time too. I am. Trust me, I am. And we will do what we can
12 do in that regard. Is there any -- anything else? All right.
13 Thank you all so much. Mr. Wallace, could I see you for a
14 second on a totally -- on a whole different matter?

15 **MR. WALLACE:** Always, Your Honor.

16 **THE COURT:** Thank you. We are gone. Court is
17 adjourned.

18 (HEARING CONTINUED TO JULY 17, 2024, 8:45 A.M.)
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25

CERTIFICATE OF COURT REPORTER

I, Teri B. Norton, RMR, FCRR, RDR, Official Court Reporter for the United States District Court for the Southern District of Mississippi, appointed pursuant to the provisions of Title 28, United States Code, Section 753, do hereby certify that the foregoing is a correct transcript of the proceedings reported by me using the stenotype reporting method in conjunction with computer-aided transcription, and that same is a true and correct transcript to the best of my ability and understanding.

I further certify that the transcript fees and format comply with those prescribed by the Court and the Judicial Conference of the United States.

S/ Teri B. Norton
TERI B. NORTON, RMR, FCRR, RDR
OFFICIAL COURT REPORTER

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION

PHI THETA KAPPA HONOR SOCIETY PLAINTIFF/COUNTER-DEFENDANT

VS. CIVIL CASE NO. 3:22CV208-CWR-RPM

HONORSOCIETY.ORG, INC., DEFENDANTS/COUNTER-PLAINTIFFS
MICHAEL MORADIAN,
HONOR SOCIETY FOUNDATION, INC.

VS.

DR. LYNN TINCHER-LADNER THIRD-PARTY DEFENDANT

TRANSCRIPT OF EVIDENTIARY HEARING

VOLUME 2 OF 2

BEFORE THE HONORABLE CARLTON W. REEVES
UNITED STATES DISTRICT JUDGE

JULY 17, 2024
JACKSON, MISSISSIPPI

REPORTED BY: TERI B. NORTON, RMR, FCRR, RDR
Mississippi CSR #1906

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MR. MICHAEL MORADIAN

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1 **THE COURT:** Good morning. This is Phi Theta Kappa
2 Honor Society versus HonorSociety.Org, Inc., 3:22cv208.

3 Is there anything we need to take up before we -- we are
4 here today to continue the hearing on the temporary restraining
5 order/preliminary injunction. Is there anything we need to
6 take up before we call the next witness?

7 **COURT REPORTER:** Please turn your mic on.

8 **MR. WALLACE:** I think we are ready for them to
9 proceed, as far as we are concerned.

10 **THE COURT:** All right. Thank you. Mr. Wallace
11 typically doesn't need a mic.

12 **MR. NEWMAN:** Your Honor, I just want to point out
13 that counsel has agreed that to streamline the proceedings, Mr.
14 Polak is going to call Mr. Moradian as his witness, and then
15 rather than ask questions within the scope of that examination,
16 I will do my direct examination. And then Mr. Polak is going
17 to want to cross, and I'm going to want to redirect, and he has
18 objected to that, but I think I'm entitled to redirect because
19 I'm not going to call him separately in my case, but I will
20 allow the Court to consider that as the proceedings roll out.
21 Thank you.

22 **THE COURT:** Okay. All right. No problem. Mr.
23 Polak, then, you wish to call your witness?

24 **MR. POLAK:** Michael Moradian.

25 **THE COURT:** All right. I appreciate the parties for

1 wanting to streamline things. I do appreciate that immensely.

2 **THE CLERK:** Place your left hand on the Bible and
3 raise your right hand.

4 **(OATH ADMINISTERED.)**

5 **THE COURT:** Mr. Moradian, you were in the courtroom
6 the other day and you have been here I think every time that
7 we've testified or taken testimony during this hearing, and I
8 know you've heard my instructions. You've testified before, I
9 think. I will just ask you to please follow the instructions
10 that I've given you and the other witnesses in this case. But
11 for the record, just to start us off, could you state and spell
12 your name for the record.

13 **THE WITNESS:** Sure. My name is Michael Moradian,
14 spelled M-I-C-H-A-E-L, Moradian, M-O-R-A-D-I-A-N.

15 **THE COURT:** Thank you, sir. Mr. Polak, you may
16 proceed when you are ready.

17 **MICHAEL MORADIAN,**
18 **having first been duly sworn, was called as an adverse witness**
19 **and testified as follows:**

20 **CROSS-EXAMINATION**

21 **BY MR. POLAK:**

22 Q. Mr. Moradian, do you recall the survey questions that you
23 used in the community college survey that this Court enjoined?

24 A. Yes, I do.

25 **MR. POLAK:** Could you turn on the Elmo, please.

1 Your Honor, what I'm showing the witness is already on the
2 Court's docket. This is your order on the preliminary
3 injunction, and we are going to use this for a second here with
4 this witness. If you would like a copy, I have extra copies.

5 **THE COURT:** I have a copy. Thank you.

6 **BY MR. POLAK:**

7 Q. So in the Court's injunction order, the Court listed out
8 the questions that PTK was concerned about, and that formed the
9 basis of its motion for a temporary restraining order. Do you
10 recall that?

11 A. Yes, I do.

12 Q. You've read this order before, haven't you?

13 A. Yes, I have.

14 Q. Did you read it the day that it was issued?

15 A. I don't know that it was the day it was issued, but within
16 a day or two, a couple of days.

17 Q. You had an opportunity to read it from beginning to end,
18 didn't you?

19 A. Yes.

20 Q. So let's look at these questions, just so we can remind
21 ourselves about what the topics of those questions were. The
22 first question said, "Does it hurt the reputation of Phi Theta
23 Kappa that a chapter advisor was arrested in February of 2024
24 for allegedly embezzling funds?" Do you see that?

25 A. Yes.

1 Q. And that was in the survey, wasn't it?

2 A. Yes.

3 Q. Next one, "Does it hurt the reputation of PTK that their
4 last executive director resigned after alleged sexual
5 harassment of multiple members of the society?" Do you see
6 that?

7 A. Yes, I do.

8 Q. That was in the survey, right?

9 A. Yes.

10 Q. Next question, "Does it hurt the reputation of PTK that
11 their last executive director took a 3-million-dollar golden
12 parachute of non-profit student funds while resigning?" That
13 was in the survey, wasn't it?

14 A. Yes.

15 **THE COURT:** For the record, you said student funds.
16 I think that reads student dues.

17 **MR. POLAK:** Thank you, Your Honor. That is correct,
18 student dues.

19 A. Thank you.

20 **BY MR. POLAK:**

21 Q. Next question, "If PTK falsely claimed it was the official
22 honor society for community colleges, would that make you
23 skeptical or wary of PTK?" That question was in the survey,
24 wasn't it?

25 A. Yes.

1 Q. "If PTK falsely claimed the average member gets \$2,500 in
2 scholarships, would that make you skeptical or wary of PTK?"
3 That question was also in the survey?

4 A. Yes.

5 Q. "If PTK falsely claimed that you were in the top ten
6 percent of students, would that make you skeptical or wary of
7 PTK?" That question also was in the survey, right?

8 A. Yes.

9 Q. So there was a total of six questions that were at issue
10 at that hearing and in connection with the Court's order,
11 right?

12 A. Yes.

13 Q. Now, in particular, these questions the Court found to be
14 both intentionally made and malicious, right?

15 A. I don't believe that was the exact characterization.

16 Q. You don't recall the Court using the word "malicious" in
17 this description of these questions and the survey itself?

18 A. I do recall the word, yes.

19 Q. But do you recall the Court using that word in connection
20 with those questions?

21 A. Yes.

22 Q. And do you acknowledge that the Court found those
23 questions to have -- to be intentionally malicious, to harm
24 PTK?

25 A. I do acknowledge that that was what was said, and I hope

1 to disprove that today.

2 Q. Do you agree or disagree that in your 5,000 websites and
3 social media posts that we are here about today, that you make
4 reference to the claim that PTK falsely advertised its
5 membership as in the top ten percent? Is the claim that PTK
6 falsely advertised its membership is in the top ten percent
7 part of the content of the 5,000 websites that you created? A
8 simple yes or no.

9 A. The allegations that are in the lawsuit which that is a
10 part of, yes, I agree.

11 Q. That's not what I asked you. I didn't ask you whether it
12 was part of the lawsuit. I asked you whether or not Honor
13 Society's claim that PTK falsely advertised its membership in
14 the top ten percent is contained in the websites, the 5,000
15 websites that you published?

16 A. Yes, the allegations are listed.

17 Q. Same question as to this allegation that it is false that
18 the average member of PTK gets \$2,500 in scholarships. That
19 also is in your 5,000 websites?

20 A. Yes, that allegation is listed.

21 Q. The allegation that it is false that PTK is the, quote,
22 official honor society of community colleges is also in your
23 5,000 websites?

24 A. Yes, I believe that allegation is listed.

25 Q. Your allegation that the former PTK advisor was arrested

1 for embezzlement of funds is also contained in the 5,000
2 websites that you created, right?

3 A. No, I never mentioned that the executive director was
4 arrested.

5 Q. You never mentioned that she was arrested? Do you not
6 recall the photograph of the -- of that former PTK advisor
7 standing in front of what looked to be an arrest picture, like
8 a mugshot with the lines on top? You don't recall that?

9 A. I believe you are asking about the executive director.

10 Q. The former PTK advisor that was arrested for embezzlement
11 of funds, that is contained in your 5,000 websites, isn't it?

12 A. Yes, that allegation or statement of fact is in the
13 articles.

14 Q. Is your allegation that PTK has misappropriated chapter
15 funds or moneys or dues contained in the 5,000 websites?

16 A. I'm sorry. Where are you referencing?

17 Q. I'm just asking you. Is that allegation contained in the
18 5,000 websites that you published?

19 A. I believe it is, yes.

20 Q. And this allegation that a former executive director
21 engaged in sexual harassment, that too is included in the 5,000
22 websites that you published, isn't it?

23 A. Yes.

24 Q. Are you the one that created the 5,000 websites?

25 A. I have not created 5,000 websites. That's a

1 mischaracterization. They are just pages on a website. And,
2 yes, I did create those pages.

3 Q. You are the one that created the content that is found on
4 the internet that Dr. Tincher-Ladner testified to this Court
5 about last week?

6 A. Yes.

7 Q. You're the one that created those AI images as well?

8 A. Well, the AI created it, but, yes --

9 Q. Well, Mr. Moradian, somebody had to tell the AI to create
10 it. You're the one who told the AI to create it, right?

11 A. Yes.

12 Q. So we just went through the Court's order here that
13 identified all the questions that were at issue, and we went
14 through, also, the categories of documents -- or the categories
15 of information that are contained on those 5,000 websites. So
16 you don't disagree that you merely took all the things that
17 Judge Reeves ordered you to not send students and repackaged
18 them into 5,000 websites and countless social media posts?

19 A. All that, Your Honor, Mr. Reeves -- how do I refer --

20 Q. Judge.

21 A. Judge Reeves, Your Honor, all that he asked was that I do
22 not use the exact survey questions in that exact form and to
23 consult you if I do do similar questions to a survey. So he
24 did not enjoin -- it was just that narrow word usage.

25 Q. So you took a real narrow understanding of what Judge

1 Reeves' order was?

2 A. Well, a preliminary injunction is a narrow focused
3 document.

4 Q. I've got a demonstrative exhibit that I'm using. I've
5 already given it to opposing counsel. I understand there are
6 no objections to it.

7 **MR. NEWMAN:** I don't think you are going to confuse
8 the Court, so go ahead.

9 **MR. POLAK:** What this is, Your Honor, is a comparison
10 of the enjoined conduct in your order with the content of the
11 online campaign, so we can see the similarity of those two
12 things.

13 **MR. NEWMAN:** I object to the characterization because
14 it says "statements enjoined by this Court's TRO," but the
15 statements were not enjoined. It was survey questions.

16 **THE COURT:** All right. Thank you. Objection
17 overruled.

18 **BY MR. POLAK:**

19 Q. So down the left-hand column, we see a repeat verbatim of
20 what we found. We were just looking at in the Court's order
21 where the questions that were contained in the survey were
22 listed. Do you see that?

23 A. I see that.

24 Q. Okay. So, for example, the very first top cell, "If PTK
25 falsely claimed you were in the top ten percent of students,

1 would that make you skeptical or wary of PTK?" That was in
2 your survey, correct?

3 A. I believe so, if this is the exact quote.

4 Q. Okay. Now, comparing that against Exhibit A3 at page 3,
5 you wrote in one of your 5,000 websites, "Phi Theta Kappa often
6 advertises itself as an exclusive honor society inviting
7 students who supposedly fall within the top ten percent of
8 their class. However, this claim is misleading." Do you see
9 that?

10 A. I see that.

11 Q. Okay. So in the question that was enjoined that the Court
12 found to be intentionally malicious, you wrote, "If PTK falsely
13 claimed," but in the statements on the website, you just
14 dropped the "if" and you went full on saying "this is
15 misleading," right?

16 A. The statement is about the lawsuit and is different and
17 different wording, and it's not a survey question, and it was
18 not enjoined.

19 Q. So that's your defense here. The judge didn't enjoin you
20 from repackaging the very same information that he told you was
21 malicious so you could go ahead and not publish it just once,
22 twice, five times, ten times; you could use AI and republish it
23 5,000 times. That's what you want this Court to believe?

24 A. I believe the Court understands the truth in the
25 preliminary injunction.

1 Q. Okay. We could go through this in more detail, Your
2 Honor, but we also see in the next cell here, if PTK -- this
3 one relates to the 2500 scholarships. If we were to look at
4 Exhibit 4 at page 4, it says -- this is a quote from the
5 website, Mr. Moradian -- "PTK allegedly claims that its average
6 member gets \$2,500 a year in transfer scholarships, which is
7 false. This misleading statement" -- I'm sorry, "These
8 misleading statements deceive students about the benefits of
9 PTK membership."

10 So again, you drop the "if" that is in the question, and
11 you move on to just claiming definitively that it is misleading
12 and deceptive, right?

13 A. Mr. Polak, this statement says allegedly in here. It's
14 talking about the lawsuit. And how else are we supposed to
15 communicate? This is a freedom of speech and talking about
16 litigation.

17 Q. Right, but you issued a press release, you did that, but
18 we are not talking about the press release, are we, Mr.
19 Moradian? We are talking about the fact that you did far more
20 than that. You created 5,000 websites dedicated to stating
21 definitively that PTK's advertising is not just allegedly
22 misleading, that it is misleading. You wrote, "These
23 misleading statements deceive students about the benefits of
24 PTK membership." Right? That is from your websites, right?

25 A. May I ask that we please not mischaracterize? They are

1 web pages. These are not launched websites.

2 Q. Website content. I believe there are 5,000 different
3 websites. You believe differently. It doesn't matter. There
4 are 5,000 different places on the internet to go look for this.
5 That's not the point. The point is that you created 5,000
6 different pieces of internet content that contain statements
7 like this where it is definitively said that PTK's advertising
8 is misleading and deceptive. Isn't that right, Mr. Moradian?

9 A. I think it is important for characterization's sake that
10 for the rest of the day we refer correctly to what pages
11 because --

12 Q. Is that correct, Mr. Moradian?

13 A. -- it's mischaracterization.

14 **THE COURT:** Hold on. Finish your answer.

15 A. Thank you, sir. So there were 5,000 web pages on just a
16 couple of websites, and that's an important thing to
17 distinguish, and these are essentially, broadly speaking,
18 talking narrowly about the litigation claims.

19 **BY MR. POLAK:**

20 Q. Let's go on to the next cell. This one talks about
21 whether or not it is true or false that PTK is the official
22 honor society for community colleges. On your website content,
23 republished 5,000 or more times, this includes falsely claiming
24 to be the only official honor society and selling members'
25 personal information with their consent. That is on your

1 website too, isn't it?

2 A. Yes, it is speech discussing the claims in this
3 litigation.

4 Q. You go on here where there's -- part of the questions
5 spoke to the issue of does it hurt the reputation related to
6 the allegedly embezzling funds. That was in your survey
7 questions. It also talks about the use of \$3 million as a
8 golden parachute of student dues.

9 On your 5,000 pages of website content, you wrote, "These
10 deceptive tactics, the lawsuit claims, have enabled PTK to
11 misappropriate significant funds from students, exploiting
12 their trust and aspirations." That is from Exhibit 4 at page
13 4.

14 You also wrote in a different website, "PTK has
15 misappropriated significant sums from students by exploiting
16 their trust and aspirations."

17 So it's the same stuff, the same stuff the Court told you
18 not to be out there publishing in the form of questions, and
19 you just repackaged it in the form of these 5,000 websites or
20 web pages or web content or however you want to characterize
21 it.

22 A. This one is actually a mischaracterization. Please leave
23 that there. We look at the left and we are talking about a
24 chapter advisor allegedly embezzling funds, and we are talking
25 about a previous executive director here. On the right, we are

1 looking at deceptive tactics that the lawsuit talks about and
2 the misappropriating significant funds, and misappropriating
3 significant funds is speaking directly to what's going on in
4 this lawsuit where PTK is taking greater than \$15 million a
5 year from students with a statement based on a lie.

6 Q. Let's go back and look at the order that Judge Reeves
7 entered, and we are looking at page 4, at the very bottom. The
8 Court wrote "The survey questions and public records requests
9 were intentional and willful. Honor society does not contest
10 this. The content of and hyperlinks within the survey show
11 malicious intent to harm PTK's lawful business." Did I read
12 that correctly?

13 A. Yes, I believe you did read it correctly.

14 Q. So the judge here is not telling you that it's the format
15 of it in question form that is the problem. He doesn't say,
16 the questions and hyperlinks within the survey show malicious
17 intent. He is telling you that the content of and hyperlinks
18 within the survey are malicious. Did you miss that word when
19 you read it?

20 A. I think when this was issued, I had my new counsel for
21 only two weeks, and we didn't have a chance to contest that in
22 the previous TRO hearing. And I do read this to say that, but
23 I hope to show today why they were not in that way.

24 Q. You didn't agree with Judge Reeves' order, did you?

25 A. That's not correct. I read it very closely and stuck to

1 it letter by letter.

2 Q. Let's take a look at the deposition I took of you back on
3 May 3rd of this year. And let's go to page 212, lines 12
4 through 22.

5 "Did you read Judge Reeves' preliminary injunction order
6 concerning the survey?"

7 "Answer: I believe -- I believe so."

8 "Question: Do you -- do you recall that Judge Reeves
9 called this survey malicious?"

10 "Answer: I'm not sure."

11 "Question: You are not sure? You don't recall? That's a
12 pretty big word and a pretty important word where a federal
13 judge calls this survey malicious and you don't recall that."

14 "Answer: I recall reading the statement."

15 "Question: Okay. So you recall reading the statement in
16 the injunction where he called it malicious. Do you agree with
17 Judge Reeves that this survey was maliciously intended?"

18 "Answer: While I admire Judge Reeves and I view him as
19 venerable and respect him, I believe that, you know, in that
20 TRO hearing, he was very misinformed, and I don't think that he
21 had a chance to have a truly objective analysis."

22 You didn't like his order, and you had no intention of
23 complying with it, did you, Mr. Moradian?

24 A. That is not true. I did --

25 Q. You thought it was misinformed.

1 A. I didn't say -- what I said here is simply that due to the
2 fact that we didn't have a chance to present everything, and
3 you guys also spoke at great lengths, we didn't have a
4 chance -- I do respect, as I said, and view him very venerably,
5 and I respected his word and I followed it to the word exactly.

6 Q. Are you blaming your lawyers for this? Is it their fault
7 that you lost that hearing? Sorry. Let me withdraw that
8 question. Is it their fault that Judge Reeves was misinformed,
9 to use your word?

10 A. I don't believe that speaking about my counsel is
11 appropriate here. I'm just simply giving some analysis of my
12 feedback of what we saw when I had a counsel that was two weeks
13 into the case, and you've been here for three years just
14 propounding these narratives, and, you know, how could he have
15 a chance?

16 Q. So just so we are clear, Judge Reeves' order concerned the
17 content of that survey, and you found his order to be
18 misinformed?

19 A. No, sir.

20 Q. So you created that survey the night of
21 Dr. Tincher-Ladner's deposition, right? That's what you told
22 me at your deposition.

23 A. I don't believe it was the night of her deposition. I was
24 here in Mississippi. I wasn't sitting on a computer.

25 Q. Well, the point is, you're the one that drafted those

1 questions and that survey and sent it to the students, right?

2 A. I believe so.

3 Q. So you knew exactly what was in that survey because you're
4 the one who drafted it?

5 A. Yes, that's correct.

6 Q. And you sat here throughout the entire TRO hearing that we
7 had back in March and you heard the evidence then as well,
8 right?

9 A. Yes.

10 Q. Now, isn't it true that you promised the Court that you
11 wouldn't send out questions like these again?

12 A. Yes, and I have not.

13 Q. Let's look at exactly what you said. You were present at
14 the hearing. To refresh your memory, let's look at the
15 exchange between your counsel and the Court that you were
16 sitting in open court listening to, in the exchange between the
17 Court and counsel. Let's go to page 98.

18 This is lines 8 through 23.

19 "The Court: Now, if I understand what I've been told
20 through the papers, Honor Society has agreed to stop those
21 questions that are -- I don't know if it's what the parties
22 believe is misleading or what one side, but Honor Society said,
23 okay, I'm going to put a pause in it. We're not sending out
24 any more of these questions. Is that right?"

25 Mr. Newman said, "Yes, Your Honor, and the Court could

1 find that in Mike Moradian's declaration. Counsel today has
2 suggested the language in the declaration isn't strong enough.
3 To the extent the Court believes that, the Court could swear in
4 Mike Moradian right now and ask, but the survey that was sent
5 out with the five objectionable statements which are not
6 misleading, but" --

7 "The Court: But you've agreed not to send out anymore."

8 And Mr. Newman says: "And the reason why is because Honor
9 Society sent a one-time survey out."

10 So here, in that instance, the Court is asking you, are
11 you going to send out these questions again. I take it you
12 understood that you just couldn't ask those specific questions
13 ever again, but the content of the questions was just fine. Is
14 that your position here today?

15 A. Those narrow specific questions were enjoined. I honored
16 that to the word. And it was stated that we could ask similar
17 questions and to run it by you to ask for, you know, clearance.
18 And to that effect, that shows that we are allowed to use
19 similar statements. We did not publish any new surveys using
20 such content, and so we followed to the word exactly what Your
21 Honor asked.

22 Q. Do you think that position is in line with the spirit of
23 what it is that Judge Reeves was telling you, that the content,
24 quote, content of those survey questions was intentional and
25 malicious?

1 A. Sorry. Can you repeat that?

2 Q. Do you think that position is in the spirit of what Judge
3 Reeves told you in his order, that he was upset with the
4 content of the survey questions because he found them to be
5 malicious and intentionally designed to harm PTK?

6 A. Yes, of course, I believe that they were okay because we
7 followed it to the exact word. And what you are asking is a
8 freedom of speech issue. It's not about the surveys anymore.
9 You are talking about public statements.

10 Q. But this hearing --

11 **THE COURT:** Hold on for a second. We are going to
12 talk about the law. No need for you to testify about it. I'm
13 pretty sure we are going to have a very candid discussion on
14 what did -- what I said here and how it affects what the duties
15 and responsibilities of the parties are with respect to this
16 and whether there are any First Amendment concerns. I don't
17 think we need to elaborate here on that. I'm pretty sure the
18 parties are ready to talk about that.

19 **BY MR. POLAK:**

20 Q. Now, you said some other things in your declaration which
21 were parroted to the Court at the hearing that we had back in
22 March. You also represented to the Court during that
23 proceeding that the records requests that were the subject of
24 that -- remember, your organization had been sending out
25 hundreds of FOIA requests to various different community

1 colleges. Do you recall that?

2 A. Yes.

3 Q. And you represented to the Court in your declaration and
4 through your counsel that those records requests are not for
5 discovery in this case but for, quote, competitive reasons. Do
6 you recall that?

7 A. We've done FOIA requests within our business from before
8 we even launched. It's an integral part of our organization.

9 Q. And your lawyer, Mr. Newman -- if I could have the Elmo
10 back up, thank you -- on page 89, lines 13 through 16, in
11 response to a question from the Court concerning that issue,
12 Mr. Newman said, "Your Honor, two responses. First, I would
13 like to take a step back and note that Honor Society sends out
14 public records requests not for discovery in this case but for
15 competitive reasons, and so those would not all relate to
16 discovery in this matter."

17 He also said --

18 **THE COURT:** If you are reading, just slow down just a
19 tad. I think you are slow enough, but --

20 **MR. POLAK:** Thank you, Your Honor. I will slow down.

21 **BY MR. POLAK:**

22 Q. He goes on to say, "And in the second response to Your
23 Honor's questions is whether they overlap to discovery
24 responses is just, frankly, I don't know."

25 I don't have the page cite for this, but your lawyer also

1 went on to say -- the Court asked this question, "And
2 presumably they are very in tune to what the rules of discovery
3 say during the course of litigation."

4 And Mr. Newman said, "That's a good point, Your Honor,
5 because the records that our client is seeking aren't for
6 purposes of this litigation."

7 Now, you sat there while your lawyer was making those
8 representations. You never raised your hand up and said, Whoa,
9 that's not right. That's not true. Right?

10 A. This is a mischaracterization both of the statements but
11 also the essence of freedom of information requests. Freedom
12 of information requests are for transparency, they are for
13 sunshine, and there is no track where it is just for law or
14 just for information. I mean, some of the biggest scandals in
15 both higher education and outside have come through the use of
16 freedom of information. Operation Varsity Blues, which was a
17 huge scandal within higher education, was exposed from freedom
18 of information. And that's a right that the people have to
19 know what is going on within their public institutions.

20 **THE COURT:** I'm sure we are going to hear more about
21 that.

22 **THE WITNESS:** Yes, sir.

23 **THE COURT:** But it is going to come from your lawyer,
24 though. We are going to hear more about these arguments.

25 **THE WITNESS:** Yes, sir.

1 **BY MR. POLAK:**

2 Q. The FOIA requests that we were dealing with back in March,
3 those asked the hundred or so community colleges to disclose
4 class ranks, right? Some of those requests did?

5 A. I believe so.

6 Q. Some of those requests also asked for disclosure of GPAs
7 of students in community college?

8 A. Yes.

9 Q. And we see all sorts of that data in your 5,000 or so web
10 pages of content about community college GPAs and comparing
11 that against PTK's GPAs, right?

12 A. The web pages are speaking about litigation, and we are
13 talking about litigation, and we also pull in some public facts
14 to support --

15 Q. Right.

16 A. -- our statements.

17 Q. And the litigation you are talking about is because you
18 took the FOIA information that you obtained through those, and
19 you relied on that in order to make your allegations in the
20 second amended complaint that was filed on April 10th, didn't
21 you?

22 A. Well, we relied on public information.

23 Q. You relied on the FOIA requests specifically, didn't you?

24 A. Which are public information, alongside a whole host of
25 other public information.

1 Q. So is the answer yes, Mr. Moradian, you did use the
2 information for the FOIA requests to draft your second amended
3 counterclaims?

4 A. To an extent.

5 Q. Okay. So you used the information obtained in the FOIA
6 requests not for competitive purposes, as you told the Court,
7 but for purposes of this litigation, right?

8 A. That's not true.

9 Q. I don't see how it could be anything other than that, Mr.
10 Moradian. You asked for the FOIA requests in February and
11 March, and you see the information from those FOIA requests in
12 the second amended complaint. How could those two things not
13 be connected?

14 A. Well, of course, information can overlap, but it's not the
15 only reason, and we've done FOIA requests from the beginning of
16 time within Honor Society, and it's not a one-to-one process.
17 These requests are not narrowly done just for information. We
18 do freedom of information requests all the time.

19 Q. Do you think this is a game, Mr. Moradian?

20 A. No, sir.

21 Q. Do you think it's a game when you read the judge's order
22 about the TRO telling you not to use this content, and you go
23 and you republish it 5,000 times, or when you tell the Court
24 that you are using it for, quote, neutral competitive reasons,
25 and then suddenly it shows up in your second amended

1 counterclaims? Is this a game where you try to parse words,
2 find loopholes? Is that what you are aiming at here?

3 A. Not at all, and I'm just curious why there is such a fight
4 against speech and freedom of speech and truth.

5 Q. You claim that Honor Society is the largest honor society
6 by web traffic, right?

7 A. Yes.

8 Q. And your business is nearly entirely e-Commerce based,
9 right?

10 A. It's internet based. I wouldn't characterize --

11 Q. I will take that answer. It is internet based. And your
12 primary source of advertising is either on the internet or
13 through e-mail solicitations to members or nonmembers, driving
14 traffic back to your website, right?

15 A. We are a website, yes. We do that.

16 Q. All of these -- well, most of these articles that we
17 found -- I'm sorry. Let me rephrase this. All of the articles
18 that we showed the Court during Dr. Tincher-Ladner's
19 declaration and that otherwise are in the record through her
20 declaration that was filed with the Court, from
21 HonorSociety.Org, those articles are found on the same website
22 that you claim is the largest by web traffic?

23 A. Yes.

24 Q. Yes. Okay. It wasn't a great question. Let me ask it
25 probably a different way. Isn't it true that what you are

1 doing with these websites that are at issue here today is you
2 are driving much of the traffic to your website,
3 HonorSociety.Org?

4 A. Can you rephrase that?

5 Q. The websites that we are looking at that were from the
6 HonorSociety.Org website are on this very same website that you
7 claim makes you the largest honor society because of web
8 traffic to that site?

9 A. Your claims allege that that was a false statement, and
10 now that we have used our website, now you are trying to say
11 that we are using the largest website by web traffic. And yes,
12 they are hosted on our website, and yes, we are the largest
13 honor society website by traffic.

14 Q. It's true that you have hundreds of thousands of visitors
15 to your website every month?

16 A. Yes, I believe so.

17 Q. How many followers does Honor Society have on social
18 media?

19 A. Well, given that we are a very well received brand, we
20 have been around for over a decade, and we built one of the
21 largest followings in the academic space, we have over a
22 million followers throughout social media, most of those being
23 on Facebook, but we have a tremendously engaged audience, and
24 we have followers on every platform.

25 Q. And you use Instagram?

1 A. Yes.

2 Q. Facebook?

3 A. Yes.

4 Q. Twitter?

5 A. Yes.

6 Q. LinkedIn?

7 A. Yes.

8 Q. The way in which Honor Society drives membership primarily
9 is through the use of e-mail solicitations, unsolicited e-mail
10 solicitations to e-mail addresses, right?

11 A. I wouldn't characterize it that way, but we do receive
12 membership through -- in the same vein as PTK or other honor
13 societies, through e-mail.

14 Q. Okay. So as I understand the way it works, you have a
15 database that is sourced from various different locations, and
16 you use that database to push out e-mail content to people who
17 are members or nonmembers, right?

18 A. In the same way that PTK and every other honor society
19 does, yes.

20 Q. You just can answer the question yes or no. That's the
21 way you do that, right?

22 **THE COURT:** Hold on. Restate your question. I
23 didn't catch it.

24 **BY MR. POLAK:**

25 Q. You don't need to add on what PTK does. I just need you

1 to answer yes or no as to how you do it. Okay, Mr. Moradian?

2 A. Yes.

3 Q. So your organization sends e-mails soliciting people for
4 membership, and in those e-mails are embedded links, right?

5 A. I believe so, yes.

6 Q. And those links go back to your website?

7 A. I believe so, yes.

8 Q. And you are encouraging recipients of those e-mails to
9 open those links and go back to your website?

10 A. I believe so, yes.

11 Q. And you send out, I believe, a million to 3 million
12 e-mails every month. Is that right?

13 A. I believe, yes, potentially more.

14 Q. And all of those are -- that is going to include student
15 e-mails that you obtain from FOIA requests to community
16 colleges, right?

17 A. To the limited extent that we get that data, which is a
18 very small subset of our data, I believe so.

19 Q. Okay. So -- and you understand that part of the claims
20 that PTK is making here is that students receive your e-mails
21 for membership and they click the links, and they go join your
22 organization mistakenly believing they are joining PTK. That's
23 the allegation, right?

24 A. I believe I have read that amongst a host of allegations.

25 Q. And you have seen the documents that PTK has produced

1 showing that evidence, such as it is. I know you disagree with
2 it, but you have seen that evidence; is that right?

3 A. I actually haven't seen that.

4 Q. Well, we did get a chance to look at your own business
5 records at your deposition where we identified a number of
6 people who had mistakenly joined your organization thinking
7 that they joined PTK, right?

8 A. To the limited extent that I haven't seen that, we have a
9 no questions asked refund policy. And it was usually in
10 connection with issuing a refund so that members could do as
11 they wished, including join PTK or otherwise.

12 Q. But the answer to my question, Mr. Moradian, is yes, that
13 happens at your organization. People joined your organization
14 thinking they were joining PTK. The answer to that question is
15 yes?

16 A. I believe the answer would be to the extent, the limited
17 extent that that has happened, yes.

18 Q. We talked about social media accounts. Honor Society
19 Foundation has those as well, right?

20 A. I believe so, yes.

21 Q. And you personally have social media accounts?

22 A. Yes.

23 Q. And from those, you will post information about -- I'm
24 sorry, about HonorSociety.Org, right?

25 A. For clarity, I don't believe I've ever posted about PTK,

1 but I have from time to time posted about the business of which
2 I'm the founder and executive director of, yes.

3 Q. College Budget is a company that you also own?

4 A. Yes, I founded that as well.

5 Q. College Budget has websites?

6 A. Yes.

7 Q. It is found at CollegeBudget.com?

8 A. Yes.

9 Q. And it has social media accounts?

10 A. Yes.

11 Q. On those same platforms we talked about before?

12 A. I'm not sure about every platform, but broadly, yes.

13 Q. You have activated College Budget's website and social
14 media to publish the same information that we find in the 5,000
15 websites, right?

16 A. To a limited extent, we have posted and reposted, yes.

17 Q. And taking a look at Exhibit 35 -- is the witness notebook
18 up there now? I don't think it is.

19 **MR. POLAK:** While he is looking for that, Your Honor,
20 I will just use the Elmo on this.

21 **BY MR. POLAK:**

22 Q. This is the first page from Exhibit 35. This is taken
23 from College Budget.com. This is an example of an article that
24 you had published concerning Dr. Tincher-Ladner and Phi Theta
25 Kappa's alleged false advertising, right?

1 A. Yes, this is a document or an article about the lawsuit.

2 Q. And you instructed -- are you the one that wrote this?

3 A. I believe so, yes.

4 Q. Okay. So you didn't have to instruct anybody else to do
5 it. You did it. Is that right, Mr. Moradian?

6 A. I believe so, yes.

7 Q. And there's another article, Exhibit 39 --

8 **THE COURT:** If you need to take him the notebook, you
9 can.

10 **MR. POLAK:** Go ahead and give it to him, but we will
11 stay with the Elmo. I think it is a little more efficient this
12 way. But just keep it there, and we are on Exhibit 39.

13 **BY MR. POLAK:**

14 Q. If you will just turn your attention to the screen, Mr.
15 Moradian, and I think we will be more efficient here.

16 So here's another article on the CollegeBudget.com
17 website. "Phi Theta Kappa lawsuit, what you need to know."
18 And this one is dated May 21, 2024. It is roughly the same
19 date as the other article that we saw. Is this an article that
20 you also wrote?

21 A. I believe so, yes.

22 Q. Did you think that one article about it wasn't enough?

23 A. It's simply a discussion about the lawsuit.

24 Q. Well, so is the other one, right? You told us before the
25 other one was about the lawsuit, but you wrote not one, but

1 two.

2 A. Well, they are nuanced and different articles. Of course,
3 we are going to speak about it.

4 **MR. POLAK:** If you could turn on the computer screen.
5 So we are going live, Your Honor, on the internet here. I
6 wanted to get the most recent example of the CollegeBudget.com
7 website. I'm going to show it to the witness. Let me move
8 this over here.

9 **BY MR. POLAK:**

10 Q. So when we look at this, Mr. Moradian, this is the
11 website. We see CollegeBudget.com up here at the upper
12 left-hand corner. When you go to the home page, the very first
13 article that comes up is the one that we looked at before,
14 which was Exhibit 35. Do you recall that?

15 A. I believe there are five or six articles above this in a
16 rotating carousel.

17 Q. Well, you have your banner up top, but the first posted
18 one is the one we are looking at here. Underneath that
19 banner is -- and it says PTK lawsuit. Do you see that?

20 A. These are in chronological order.

21 Q. So we look at the first two, and I told you those were
22 from May 21, 2024. The next most recent article on this
23 website is dated March 8th, 2023, about some Greek organization
24 called Kappa Mu Epsilon, right?

25 A. This is about another honor society, yes.

1 Q. The point is less about the content of the article and
2 more about the date range. There was nothing posted on your
3 CollegeBudget.com website for over a year until you decided to
4 post these two articles about Dr. Tincher-Ladner and the
5 lawsuit, right?

6 A. Yes.

7 Q. There's no other new content that was over -- well over a
8 year.

9 A. I don't believe there's any requirement to write content.
10 We run this website, and that's how we run it.

11 Q. The point is, Mr. Moradian, you reactivated this website
12 that you own, that you can control, for purposes of this online
13 campaign against Phi Theta Kappa?

14 A. This website has been active for over ten years. It will
15 be active. And there's nothing about this -- College Budget is
16 meant to inform students. Historically, it was meant to help
17 save students money. And to that extent, this lawsuit aims to
18 do the same thing, save students money and increase
19 transparency.

20 So, yes, we did publish two articles about it. I don't
21 think these are the last articles we are going to publish.
22 They are just two along the line of many.

23 Q. So you intend to do more than just 5,000 websites, don't
24 you?

25 A. Again, we have never launched 5,000 websites. Websites

1 implies it's a domain that I would be paying \$20 a year to run.
2 These are just simply web pages, and the characterization is
3 wrong, and that's important. But the point is, of course
4 CollegeBudget.com will continue doing what it does.

5 Q. Well, whatever it did, it didn't do it for about a year
6 and a half until you posted these new articles, right, Mr.
7 Moradian?

8 A. Well, I have been very busy. I don't think that reflects
9 on the future of CollegeBudget.com.

10 Q. Let's look at this. This article here is written
11 supposedly by College Budget. Is there anything referencing
12 here on this article or on this website CollegeBudget.com's
13 relationship to you or to HonorSociety.Org?

14 A. It is widely known throughout --

15 Q. Widely known? How do you know that?

16 A. Google it.

17 Q. Okay. Is there any words that are on these pages -- if
18 the Court were to look at the web articles or if the Court were
19 to look at the website and it were to look for a statement on
20 there that College Budget is an affiliate of Honor Society,
21 would that be found?

22 A. This website is not owned by HonorSociety.Org. It is very
23 clear and transparent that I work with CollegeBudget.com as
24 well as Honor Society.Org. One simple Google search of both
25 reveals who operates both of them. And it is exceedingly clear

1 that I'm involved with both of them.

2 Q. You also own a company called CampusBuddy, right?

3 A. That's right.

4 Q. It has a website as well, right?

5 A. That's correct.

6 Q. It has social media, doesn't it?

7 A. That is correct.

8 Q. And it has also sat largely dormant for years, right?

9 A. I believe so.

10 Q. But you activated it recently to post social media for you
11 on this campaign against PTK. Isn't that true?

12 A. I wouldn't call this a campaign against PTK, but, you
13 know, to the extent that we are putting -- broadcasting
14 knowledge and about the litigation, yes, we did feel that it
15 was something that, you know, would be correct for CampusBuddy
16 to cover.

17 Q. And those social media posts -- I will withdraw that
18 question. You can go ahead and take that down. Let's go back
19 to the Elmo. Let's look at Exhibit 40. This is a website
20 called -- I'm sorry. This is a screen capture from a website
21 called HonorSocietyMuseum.com or .org. Are you familiar with
22 that website?

23 A. Yes, I am.

24 Q. It's owned and operated by you or your organization, Honor
25 Society, isn't it?

1 A. It is owned and operated by Honor Society Foundation.

2 Q. And Honor Society Foundation is a non-profit that you
3 created to be an affiliate of Honor Society, to provide
4 scholarships for Honor Society, and so on and so forth, right?

5 A. It's an organization to provide scholarships, preserve the
6 history of honor societies, and to provide educational content
7 for students.

8 Q. Are you the one that created the content here on this
9 May 17, 2020 article?

10 A. Yes, I am.

11 Q. And this is not just a republication of the press release,
12 is it?

13 A. It discusses the litigation and the allegations.

14 Q. So the answer is no, Mr. Moradian? This document and the
15 content in it is not merely a verbatim recitation of the press
16 release that you had issued in April, is it?

17 A. It is not meant to be nor is it a verbatim press release.

18 Q. So it's got other information on it, and it's written
19 differently than a press release. And the title of it is "Phi
20 Theta Kappa is sued: Disturbing deceptive practices and
21 monopolistic tactics." Do you see that title?

22 A. Yes, I see the title.

23 Q. And you have this image here. Did you create this image?

24 A. I believe this image was created, yes, with the help of
25 AI.

1 Q. So you were the one that used AI to create this image?

2 A. That is correct.

3 Q. If you were to go on the Honor Society Museum website,
4 would you be able to tell that it is an affiliate of your
5 organization?

6 A. I believe it is widely disseminated, that it is --

7 Q. Is their text on the website that says that Honor Society
8 or Honor Society Foundation owns the Honor Society Museum?

9 A. We do not own the Honor Society Museum. It's owned by a
10 public benefit charity, so we don't own it.

11 Q. So if someone went to the Honor Society Museum, they would
12 think it was associated with a public charity?

13 A. Yes.

14 Q. That is your intent?

15 A. It is owned by the Honor Society Foundation, which is a
16 501(c)(3). Yes.

17 Q. So it is your intent that when someone goes to the Honor
18 Society Museum website, that they perceive it to be sponsored
19 by a charity, right?

20 A. It is creating public awareness, and yes, that is what it
21 is for.

22 Q. Let's add this up. You activated the following things to
23 engage in this online campaign against Phi Theta Kappa: The
24 HonorSociety.Org websites, right? Just yes or no. You used
25 The HonorSociety.Org websites to publish these 5,000 websites,

1 right?

2 A. Yes, we used our platform to publish pages discussing it.

3 Q. You used HonorSociety.Org's social media accounts, of
4 which there were several?

5 A. To a very limited extent.

6 Q. You used the Honor Society Foundation website?

7 A. Yes.

8 Q. You used the Honor Society Foundation social media
9 accounts, of which there are several?

10 A. To a limited extent.

11 Q. You used the Honor Society Museum website?

12 A. Yes.

13 Q. Also the Honor Society Museum's social media accounts?

14 A. I don't believe so.

15 Q. You used the College Budget's websites, or website?

16 A. Website.

17 Q. Right? You used that. We looked at that.

18 A. Two articles, yes.

19 Q. You also used College Budget's social media accounts, of
20 which there were several?

21 A. To a limited extent.

22 Q. You used College Buddy websites?

23 A. There's no College Buddy websites.

24 Q. I'm sorry. CampusBuddy's websites.

25 A. There is only one website.

1 Q. You used that website?

2 A. To a limited extent.

3 Q. And you also used the social media accounts of
4 CampusBuddy, didn't you, of which there were several?

5 A. To a very limited extent.

6 Q. So you activated nine different locations on the internet
7 to populate out this messaging about PTK and
8 Dr. Tincher-Ladner, right?

9 A. Well, we --

10 Q. Is that a yes or no? Did you use the nine that we just
11 described, Mr. Moradian?

12 A. We published our content on our websites and our platform,
13 yes.

14 Q. Let's look at Exhibit 12. This one is entitled Phi Theta
15 Kappa chapter directory. That's a pretty neutral title, isn't
16 it?

17 A. I'm not sure what you mean by that.

18 Q. You don't think that's a neutral title?

19 A. It's just a statement of what it is.

20 Q. Okay. And up in the upper left-hand corner, we see that
21 this is from the Honor Society Foundation, that public charity
22 that you were talking about.

23 A. Yes.

24 Q. So here we have a web page that's on the Honor Society
25 Foundation web page that you claim is for public charitable

1 purposes, and this is a Phi Theta Kappa chapter directory. But
2 then immediately underneath it, we see "Exposing PTK's
3 practices." Well, that doesn't have anything to do with a
4 directory, does it?

5 A. I believe this is just a description of the page.

6 Q. Well, no. The title is "Phi Theta Kappa chapter
7 directory." The subtitle is "Exposing PTK's practices." A
8 chapter directory should just be listing the actual chapter
9 names, right?

10 A. I think any web page can do anything that it wants in the
11 sense that -- of course, a chapter directory can have a
12 paragraph or an informational portion, of course.

13 Q. You don't think it is misleading to title this document,
14 "Phi Theta Kappa chapter directory" and then go straight into a
15 bunch of statements about alleged activities of PTK that you
16 found objectionable?

17 A. Sir, it is a directory. It has links to chapters. It
18 does discuss broadly why we are here, which is this litigation
19 and the practices that are so troubling that the public has a
20 need to know and a right to know.

21 Q. So you've got to go all the way -- after you read "Phi
22 Theta Kappa chapter directory," you have to go and read through
23 "Exposing PTK's practices." These are all links to other
24 articles, right?

25 A. Yes, that's right.

1 Q. Those are some of the 5,000 web pages, web content, that
2 you created designed to attack PTK?

3 A. I wouldn't characterize it that way, again --

4 Q. Well, let's look at the first title. "The hidden truth
5 behind Phi Theta Kappa's top ten percent claims." You don't
6 think that is an attack on PTK?

7 A. I intend to prove and show the merits to that today.

8 Q. I understand you intend to prove things, Mr. Moradian.
9 The question is not what you intend to do today. The question
10 is about the title. That title is an attack on PTK, isn't it?

11 A. No.

12 Q. "Are Phi Theta Kappa scholarships truly exclusive. A
13 deeper look." You don't think that's an attack on PTK?

14 A. It's just speech. It's just talking about it.

15 Q. We go on here. There's another section that they have to
16 go through, "How PTK's practices affect chapters." You go on
17 to say in that section, "The deceptive advertising and
18 misleading claims not only tarnish the reputation of PTK but
19 also impact the individual chapters and their members." What
20 does that statement have to do with a directory of chapters on
21 a public charity website?

22 A. Well, we are going to discuss that extensively.

23 Q. I understand you are going to get your chance. Your
24 chance is right now, Mr. Moradian. What does that statement
25 have to do with a chapter directory on what you claim is a

1 public charity website?

2 A. I think it has a lot to do with it because, as we are
3 going to discuss today, when we look at the practices and the
4 troublesome work of PTK, that we will see that that is
5 meritful. And, you know, this directory is simply a directory
6 that links to web pages. It's not, you know, meant for -- I
7 don't even know that this page has been seen by anybody. It is
8 just, you know, a hierarchy for the website to be able to
9 categorize all the pages.

10 Q. So it is your testimony when you click on these links, and
11 they go on for page and page and page, listing all -- these are
12 links to every single web page that you created about these
13 campuses, the person clicking on that link is going to go find
14 a neutral description of that chapter and PTK? Is it going to
15 find the contact information of the advisor? It's not, is it?
16 It's not, is it?

17 A. These pages are not meant for that.

18 Q. Right. You are not going to find the address of the
19 chapter, are you?

20 A. If --

21 Q. It's just a yes or no question. Are you going to find the
22 address on there, Mr. Moradian?

23 A. If we were to do --

24 Q. It's a yes or no question.

25 **THE COURT:** Hold on. Answer his question, and you

1 may explain your answer if you need to, but don't talk over one
2 another. So ask your question, sir.

3 **BY MR. POLAK:**

4 Q. If you go on any of these web pages, will you find the
5 address of the chapter?

6 A. You would not, because if we were to do that -- you know,
7 we specifically went through links to make sure that this page
8 is clear that's not affiliated with PTK, because if we did say
9 that, you would say that we were posing to be PTK.

10 Q. But you called it a chapter directory.

11 A. Of course. It is a chapter directory.

12 Q. Instead, when you click on these I believe 23 pages of
13 links and you were to click on, you know, the very first one
14 here, the Beta Nu Alpha chapter, you would go to a web page,
15 and we looked at it or something similar during
16 Dr. Tincher-Ladner's testimony. It doesn't provide any of that
17 directory information, and it is solely more publication of
18 your claims against PTK, right?

19 A. Again, a directory has -- it means --

20 Q. It's a yes or no question, Mr. Moradian. That's what you
21 would find if you go to that link, right?

22 A. You would find -- yes, you would find information about
23 our claim that involves this school and chapter.

24 Q. And those pages contain allegations that students should
25 be concerned if they join PTK and should reconsider their

1 membership, right?

2 A. I don't believe it has those statements today. I believe
3 those statements were up for 2 to 3 days on a Friday, Saturday
4 when they were created.

5 Q. Why did you take them down? Did you realize that those
6 were malicious against PTK?

7 A. No, of course not. The reason that they were taken down
8 is because I know how voraciously you are against speech and
9 the fact that you are looking for really anything to bring us
10 here and occupy the Court's time, our time, and really to just
11 keep this going.

12 **MR. POLAK:** Can we go to the computer?

13 **BY MR. POLAK:**

14 Q. My colleague just provided me a computer that I relinked
15 that goes to that page. I guess this is what you've changed it
16 to. Is this -- what you are looking at there, is that what you
17 see now for all of these links?

18 A. Yeah, I believe so.

19 Q. So you removed all the content that Dr. Tincher-Ladner was
20 complaining about before? You have taken all of that down?

21 A. Well, again, this was within days of publishing over the
22 weekend, and they have been this way, and this is all that is
23 on these pages since --

24 Q. When was it taken down?

25 A. I believe approximately June 23rd -- yeah, the 23rd, I

1 believe.

2 Q. So it's your position it was taken down before we had the
3 conference with Magistrate Judge Myers?

4 A. This page was like this before that, yes.

5 Q. Okay. So you still say in here, "The PTK CEO,
6 Tincher-Ladner, allegedly masterminded these deceptive
7 practices against community college students at institutions
8 and should be held accountable." What does that have to do
9 with directory information for PTK?

10 A. Well, that has specifically to do with this lawsuit, which
11 I intend to show today how true that is. And this is just a
12 web page. It's nothing more than that.

13 Q. But there's no directory information here, Mr. Moradian.
14 There's not a single address, not a -- the only e-mail address
15 that is on here is titled PTKlawsuit@gmail.com in the call for
16 action section, right?

17 A. I'm not sure what your question is.

18 Q. So if we are to look at Exhibit 2 -- you can take that
19 down. Thank you.

20 We used this in Dr. Tincher-Ladner's direct examination.
21 Is it your testimony, then, that what we find here at the
22 Sheridan College link that she looked at is no longer on the
23 internet?

24 A. I can't speak to the specific exact page.

25 Q. So it might be. It might be still up. You might have

1 missed some.

2 A. I don't believe so. There's nothing that --

3 Q. So we first raised this situation with your counsel during
4 the June 26th hearing with Magistrate Judge Myers. Did you do
5 anything to remove content off the internet on the 26th, 27th,
6 28th of June, that time frame sort of immediately following
7 that hearing where your lawyers were first told about this?

8 A. I believe, and my understanding is that everything was
9 updated or changed in the days before that, there may have been
10 one or two modifications. I can't say specifically, but I
11 believe it was mostly, if not all, done by -- days before this
12 meeting.

13 Q. This comes from Exhibit 48. This is the first page of
14 Exhibit 48. This is not Plaintiff's Exhibit 48. This is
15 Defendant's Exhibit 48, and it's a very thick document, and I
16 believe it goes on for a couple of notebooks, but you testified
17 before you used --

18 **THE COURT:** Exhibit 48 of what?

19 **MR. POLAK:** Defendant's 48.

20 **THE COURT:** Do I have it?

21 **MR. POLAK:** You do have it.

22 **THE COURT:** Is it in the record?

23 **MR. POLAK:** It is in the record. It is attached to
24 Mr. Moradian's declaration, as I recall. So it's Exhibit 48
25 attached to his exhibit -- I'm sorry, his declaration.

1 **BY MR. POLAK:**

2 Q. What is not on your exhibit is my highlighted stuff here.
3 That highlighting is from my hand, not yours, Mr. Moradian, but
4 I did that for ease of testimony. So with respect to this, I
5 believe your declaration said that you used an artificial
6 intelligence platform called ChatGPT to create some of this
7 content; is that right?

8 A. I'm not sure my declaration said that, but I believe that
9 is right.

10 Q. Okay. So -- and ChatGPT is an artificial intelligence
11 that allows you to tell the AI what it is you want it to write
12 for you, you give it some instructions, and then it spits out
13 some data after that, right?

14 A. Broadly speaking, yes.

15 Q. And is that what you used to create the content for these
16 websites?

17 A. So in the first two to three days, we -- I experimented
18 with ChatGPT because of how quickly it is evolving and
19 reshaping the internet. We published those pages on -- we
20 being I -- on the Thursday and Friday, going into the weekend
21 of June 23rd. Before the end of the weekend, I changed it to a
22 templated approach to not give the AI a chance to write
23 because -- precisely for these reasons: I didn't want to
24 create any confusion or allow any chance that any article could
25 speak in a voice that I'm not comfortable with.

1 Q. Was that done before or after we filed this motion?

2 A. Much before.

3 Q. Okay. So you realized that the content that it was
4 creating that you had posted looked as if it spoke in the voice
5 of the college and you needed to make a change?

6 A. I don't think so. I think that we were being proactive,
7 and we made it clear with our restrictions here in order to
8 make sure that this tool knows our goal is to be clear,
9 transparent, not name any other person or party, and to write
10 it from our voice. And, of course, universities, colleges, are
11 going to be referred to in third person. That's just the
12 nature of it. It's a third person object, and that's how
13 everybody writes about it, including AI. And I think, you
14 know, I didn't have a problem with it, but again, because I
15 didn't read every single page, and I wanted to, you know, very
16 narrowly control it's output, I actually removed it within a
17 day or two and, you know, put in these templated articles,
18 where we were able to control every word.

19 Q. How quickly were you able to create 5,000 websites using
20 ChatGPT?

21 A. Well, the internet expands, like, 4 billion pages a day,
22 so we are talking about billions of pages every single day.

23 Q. I didn't ask about the rest of the internet. I asked
24 about you. How long did it take you?

25 **THE COURT:** Hold on. The specific question was how

1 quickly were you able to create 5,000 websites using ChatGPT?
2 Is that the question?

3 **MR. POLAK:** That's the question, Your Honor.

4 **THE COURT:** Answer that specific question. You may
5 explain your answer, if you wish.

6 **THE WITNESS:** Thank you, Your Honor.

7 A. I'm not an expert with ChatGPT. I was merely, you know,
8 learning it. This is a learning tool. And I was able to
9 publish it fairly quickly within a matter of a day or two.

10 **BY MR. POLAK:**

11 Q. And I see here at the bottom that you asked the ChatGPT to
12 make an XML output. That's a website language, right? Or
13 actually, to put it a better way, that's a website format that
14 is consistent with your websites, like HonorSociety.Org or
15 Honor Society Foundation or College Buddy or College Budget?

16 A. Well, I think every website operates with that, yes.

17 Q. Okay. So, in other words, what you were asking the
18 ChatGPT function to do is to write this not only as content you
19 would otherwise cut and paste, but it actually is the creation
20 of the website itself, and that's why you were able to do it so
21 quickly?

22 A. It's a web page, and yes, I'm ensuring that it matches the
23 conventions of web pages.

24 Q. And I think you told the Court just a few seconds ago that
25 you did not review all 5,000 pages before they got published?

1 A. I reviewed many of the pages.

2 Q. But you did not review all of them?

3 A. For the limited duration of about 48 hours that they were
4 up on a weekend, that is correct that I didn't review every
5 single one.

6 Q. And for the other websites that remained after that
7 weekend, you didn't review them either.

8 A. I believe I have reviewed --

9 Q. So when we looked at that chapter directory and there were
10 23 pages of links, of just chapter-related links, you are
11 telling me that when those were posted, you looked at every
12 single one of those?

13 A. Well, the post is the exact same on every single page. It
14 was that short blurb.

15 Q. Did you have to hand do that or did you use AI to do that?

16 A. We didn't use AI to put that small blurb up, no.

17 Q. Let's look at the original prompt here. This came from
18 your fingers. You wrote this prompt, right?

19 A. I believe so.

20 Q. And the words that we see here came from your head?

21 A. I believe so.

22 Q. You instructed the prompt to, quote, explain the potential
23 liability for schools hosting PTK chapters, right?

24 A. Is there more to this that's cut off?

25 Q. Based on -- I'm just asking you about this prompt right

1 here that we can see.

2 A. There are words missing to the right of it that I can't --
3 I can't really tell the exact sentence.

4 Q. The Court has the full one. This is printed off from what
5 you guys gave us. "Explain the potential liability for schools
6 hosting PTK chapters." That is in your prompt, right?

7 A. Again, I can't see the whole sentence.

8 Q. I'm just asking you whether those words are there.

9 A. To the extent of what I see of this, yes, I read those
10 words.

11 Q. Next line, "Emphasize the need for schools to protect
12 their students from deceptive advertising practices." That is
13 written there as well, isn't it?

14 A. Again, yes, I do see that written there. I believe -- I
15 mean, there are full words missing here. I believe it says,
16 "Make sure it is not defamatory," and I would assume there are
17 more words than that, so -- I can't even see the full sentence
18 here. It is hard for me to confirm this.

19 Q. You don't dispute that the pages that were generated using
20 this prompt attempted to explain the potential liability for
21 schools hosting PTK chapters, right? We saw that on the
22 websites that Dr. Tincher-Ladner talked about during her
23 examination?

24 A. This web page or web pages were up for a limited amount of
25 time. They were down before any motion or hearing, but there

1 are many type of issues that, you know, have, you know,
2 reputational issues that are a liability. I mean, there are
3 many things to discuss. There's not --

4 Q. Barring a Court order instructing you never to republish
5 those websites and that website content that you took down,
6 again, there is nothing preventing you from going and taking
7 all of that content that you claimed to have taken down and
8 putting it right back up there, right?

9 A. I think your aggressive bullying and manipulation of the
10 Court system serves as a deterrent.

11 Q. So are you telling the Court you've learned your lesson?

12 A. I don't believe that there is a lesson to be learned in
13 this sense of speaking. I believe that it's a lesson that if
14 you try to speak your mind, we are not going to allow that. We
15 are going to hire five to ten attorneys to prosecute you, to
16 malign you, and to make sure you stay silent. But that's the
17 message that I received.

18 Q. So it's your view that the creation of 5,000 websites and
19 the activation of all of these social media accounts to
20 personally attack Dr. Tincher-Ladner is not bullying?

21 A. I would vehemently disagree with that statement. And I
22 believe that we have been sitting idly for two and a half years
23 since PTK took these same measures. You know, they launched a
24 press release on the day they launched this lawsuit, calling
25 it, I believe, willfully misleading, to contact the State

1 Attorney General, the BBB, and they sent this to chapters,
2 their own chapters and advisors, and we didn't even really know
3 who PTK was at the time. I certainly didn't know who
4 Dr. Tincher-Ladner was.

5 So I think that we are doing everything but bullying. We
6 are now defending ourselves after two and a half years of being
7 quiet and waiting for a chance to speak. For two and a half
8 years, we haven't had the chance to even have a conversation
9 together. Apple and Microsoft, they discuss their differences.
10 But we have just been channeled through this pipeline, and it
11 is really sad because this money could have been going to
12 students. Both what this charity of PTK is spending on five to
13 ten lawyers at a time, as well as our organization, this is a
14 gross mismanagement and misuse of public funds, and as well as
15 our own funds.

16 So to answer your question more directly, we have never
17 looked to malign PTK nor Dr. Lynn Tincher-Ladner. We have
18 learned stuff that has taught us the hugely impactful issues
19 that PTK is having. And so, of course, once -- we didn't know
20 these issues because we had never looked at PTK before, but now
21 that we see the issues, we certainly believe that we should be
22 able to share with the 130,000 students per year that are
23 essentially misled by PTK.

24 **THE COURT:** All right. At this time, I'm going to
25 take a 15-minute break for the court reporter. And, I mean,

1 that's a good place to stop for now. We are going to take
2 about a 15 or 20-minute break for the court reporter and the
3 parties. How much longer, Mr. Polak, do you believe you have?

4 **MR. POLAK:** That's always a dangerous question to ask
5 a lawyer. Let's see --

6 **THE COURT:** I don't want to put you in danger, but I
7 ask --

8 **MR. POLAK:** I would say we are probably about half
9 done. I'm going to do everything I can to get done by noon.

10 **THE COURT:** This is my point. I think I know where
11 we are at this point. Well, and we can come back and talk
12 about it, but I see at this point what we are talking about is
13 whether -- basically whether the Honor Society has violated the
14 Court's prior injunction either blatantly, in spirit, or
15 otherwise. And if they have, whether what they have done is
16 protected by the First Amendment.

17 And so I think -- I think that's -- you know, I think
18 that's what we ought to be talking about, First Amendment
19 issues and whether, you know, dropping out allegedly, and
20 whether -- talking about whether speaking of the lawsuit itself
21 is separate and apart from violating the spirit of the
22 injunction. Does talking about the lawsuit implicate the
23 survey questions, for example, that the Court has? So I think
24 I'm fully versed -- no, no, I think I'll have the parties fully
25 verse me on what the arguments might be in that regard. I'm

1 not sure if it's worth everybody's time to go -- honestly, I
2 don't want to stop anybody from making the record that they
3 need to make.

4 **MR. POLAK:** I understand, Your Honor.

5 **THE COURT:** So I say that.

6 **MR. POLAK:** I fully appreciate what you are saying.
7 You might recall that we were not the ones asking for the
8 evidentiary hearing. We were fine just arguing it on the
9 papers. I think you may recall at the conclusion of the
10 proceedings, or near the conclusion of the proceedings on
11 Friday, when we were talking about what to do, I was perfectly
12 willing to not even go through the cross-examination and we
13 just move straight to argument. And if that is what -- if the
14 Court has heard enough to make a decision on this and
15 understands the facts, understands the issues that we've got
16 here, then -- from PTK's standpoint, we are ready to proceed to
17 argument, and we could do that immediately.

18 **THE COURT:** No, I don't -- I don't want to step on
19 anybody's toes from making the record that they need to make
20 because this may not be the final decision, for example. This
21 may not be the final decision. So I'm not going to step on
22 anybody's toes about making the record they need to make, and I
23 know the other side will want to make its record. But I --

24 **MR. POLAK:** I think what you are asking me to do is
25 to move it along, and I understand that.

1 **THE COURT:** No -- and the thing is, the arguments
2 will come from counsel. And that's to you, Mr. Moradian. The
3 arguments will come to the Court through the mouths of the
4 lawyers, how they are tied together, the First Amendment rights
5 or frailties of whatever is going on. I'm going to leave that
6 to the lawyers to talk to me about and to argue those specific
7 points and to argue the merits of the request that is before
8 the Court. All right. Mr. Wallace?

9 **MR. WALLACE:** Your Honor, may I say something?
10 Because I'm going to be in charge of the law. The first thing
11 you said is the real question is has he followed your order.
12 And just so you know, I don't think there's anything in our
13 motions, and there won't be anything in my argument that says
14 he didn't follow the order. We have not moved for contempt.

15 What he has told you this morning is it's a narrow order,
16 and he followed it to the word. And what we are going to tell
17 you is, you need more words in your order. It needs to be
18 broader. I don't know if you need any more evidence, but
19 that's the legal issue we intend to present.

20 **THE COURT:** That you intend to ask for more words?

21 **MR. WALLACE:** More words.

22 **THE COURT:** All right. Thank you all. Twenty-minute
23 break.

24 **(RECESS TAKEN AT 10:26 A.M. UNTIL 10:49 A.M.)**

25 **THE COURT:** Mr. Moradian, you can return to the

1 stand. And I said Moradian. Is it Moradian or Moradian
2 (pronouncing)?

3 **THE WITNESS:** It's Moradian, similar to Meridian,
4 Mississippi, with an O.

5 **THE COURT:** All right. You are ready to proceed, Mr.
6 Polak?

7 **MR. POLAK:** We are, Your Honor.

8 **THE COURT:** You may.

9 **MR. POLAK:** If you could turn on the computer screen.
10 What I'm going to have my colleague, Mr. Etienne, do is type
11 into -- we have a Google search -- well, we have Google, the
12 website up, and we are going to run a Google search. Can you
13 type in Phi Theta Kappa Gulf Coast Campus?

14 Here we see the search returns, and if you scroll down to
15 the second one, this is an Honor Society Foundation link.
16 Let's click on that one. This one is -- this is dated June 19,
17 2024. It is on the Honor Society Foundation website. It's
18 titled "Phi Theta Kappa Alert at Mississippi Gulf Coast
19 Community College, Jackson County Campus. Caution advised
20 regarding the PTK Pi Epsilon chapter." Is that a website that
21 you yourself created using AI?

22 A. This is a web page, and this is not created using AI.

23 Q. You manually wrote this out yourself?

24 A. As I've testified, they are a template. So it is a
25 templated approach where variables such as the name of the

1 college would be added. But other than that, no, this is not
2 AI-generated.

3 Q. Who wrote the words that are on this page?

4 A. I did.

5 Q. Thank you. So you testified before that those links
6 related to the college campuses and the specific PTK chapters
7 were modified. But when we search for the chapter itself on
8 the internet, organically this comes up. You haven't taken
9 this one down, have you?

10 A. This is a different web page. I did not say I have taken
11 this down. Could we please scroll to the bottom. All the way,
12 please. Thank you. Up here. Thank you.

13 Q. Do you have anything to add to your answer or did you just
14 need to look at it?

15 A. I wanted to see the whole article and also look at the
16 fact that it talks about our litigation, it talks about the
17 site is not by Phi Theta Kappa, and it makes it very clear it
18 is by Honor Society Foundation.

19 Q. Okay. But the point here, though, is that you testified
20 earlier that you modified and removed all of the content from
21 those other links, but it's true, isn't it, that there are
22 articles just like this one for all 1300 PTK chapters still
23 existing on the internet containing this content?

24 A. These pages are different than the other pages you showed
25 me earlier. They have a different title, and they talk about

1 different content. I never said that this specific page was
2 taken off the internet. In fact, if you read the article, it
3 talks about the lawsuit, the allegations, and making it clear
4 to the public about what we've learned, you know, what we've
5 learned in the past months.

6 Q. Let's go back to the Google search return.

7 A. I think it's important to note that these Google search
8 results both, depending on what you've searched before, as well
9 as the location where you are searching, drive those factors to
10 your results. So I don't control that, and there are a lot of
11 inputs within your control that could potentially push these
12 up.

13 Q. The next one on this list says, "Phi Theta Kappa Warning!
14 Caution at Mississippi Gulf." Let's look at that article.

15 Now, this is on Honor Society's website, not Honor Society
16 Foundation. And this is about the same community college, Gulf
17 Coast Community College, talking about the Pi Epsilon chapter.
18 So this is the second article, separate article, about just
19 that chapter that can still be found on the internet, right?

20 A. I believe so. Can I see the whole article?

21 Q. Sure. Let's scroll down. It's on your website, and you
22 wrote it?

23 A. To me, it looks very clear this is published by us, where
24 we believe that an informed community is a strong community.
25 It talks about our lawsuit, and it makes it exceedingly clear

1 that this is published by us.

2 Q. Let's go back. Now let's look at the third one. This is
3 again from the Honor Society Foundation. "Caution advised
4 regarding the PTK Omicron Alpha chapter."

5 **MR. NEWMAN:** Your Honor --

6 **THE COURT:** We have, apparently, an objection.

7 **MR. NEWMAN:** Your Honor, I'm concerned about these
8 live images on the internet because they can't be preserved for
9 appeal. So, on appeal, we may want to cite to these documents
10 that counsel is asking the witness about, but we cannot because
11 these are live on the internet without any copies. So I'm not
12 objecting to the content, but I would like a copy of it for the
13 record so that we can cite to it if this goes up.

14 **MR. POLAK:** He already has a copy. We produced this
15 already.

16 **THE COURT:** It's live. It might be different. It
17 might be different. I don't know. If you have something --

18 **MR. POLAK:** I don't have it with me, but we can
19 certainly supplement the record with it if it's necessary. But
20 the testimony that is being provided is we are reading directly
21 from it, and the testimony that matters here is what has been
22 read into the record that this witness has acknowledged is
23 contained on these documents, and I think the Court is also
24 free to go on the internet itself to look at these things in
25 deciding a thing like an injunction.

1 **THE COURT:** I understand all of that, but he's made a
2 valid preservation of the record sort of objection. I think
3 that's valid.

4 **MR. POLAK:** My colleague, Mr. Cowan, is apparently
5 creating PDFs of these images right now, and he will e-mail
6 them to counsel here shortly.

7 **THE COURT:** That may preserve it. Objection
8 overruled if they can get the copies of what we are looking at,
9 if they can get hard copies of what is being discussed.

10 **MR. NEWMAN:** Thank you, Your Honor.

11 **BY MR. POLAK:**

12 Q. Mr. Moradian, down at the bottom, we see the images that
13 Dr. Tincher-Ladner -- you said that was from -- counsel
14 indicated that was from a video. Are you the one that selected
15 the specific frame from that video that was used on those other
16 websites?

17 A. These are a live video --

18 Q. They are not live video. These are still images taken
19 from a video, right?

20 A. Yes, sir.

21 Q. And you were the one that selected the specific frame on
22 the video that showed Dr. Tincher-Ladner very close to
23 Dr. Risley, but you had other frames you could choose from,
24 right?

25 A. Of course.

1 Q. And you were the one that chose that specific frame, isn't
2 that right?

3 A. Yes, I did choose the frame.

4 Q. When we looked at that other -- you can take this down
5 now. Thank you. When we looked at the website before that you
6 claim replaced those chapter directory websites, you remember
7 we looked at a sentence that you wrote on there saying that
8 Dr. Tincher-Ladner should be held accountable. Do you recall
9 that?

10 A. I do.

11 Q. Do you want Dr. Tincher-Ladner fired?

12 A. That is not my intention. It's never been my intention.
13 And I didn't even know who Dr. Tincher-Ladner was prior to this
14 lawsuit, so --

15 Q. You knew who she was when you created the 5,000 websites,
16 didn't you?

17 A. Again, they are not websites. They are simple pages. I
18 think you are making statements that are misleading. But to
19 the extent that we created these articles, you know, I will
20 show today that they are not only true, but they are shocking
21 and alarmingly true. And we have learned this in the past
22 couple of months, because we didn't ever investigate PTK
23 before. We didn't know -- we didn't follow PTK. So to the
24 extent we have learned things that the public needs to know,
25 these are, you know, critical pieces of information that you

1 are attempting to silence, and the public has a right to know.
2 So speaking about, you know --

3 **THE COURT:** Hold on. Hold on now. We are getting
4 far astray. I think the question is, or was, one of the
5 questions was if you wanted her fired, and you said you didn't
6 know her, and then it went back to -- but you created these
7 websites. Ask your specific question. Answer that question.

8 **THE WITNESS:** Yes, sir.

9 **BY MR. POLAK:**

10 Q. Do you know how many community college students are
11 currently enrolled in school?

12 A. Yes, I believe I do.

13 Q. What is that number?

14 A. Well, according to NCES, the National Center of
15 Educational Statistics run by the government, it is
16 approximately 4.4 million. According to the National Student
17 Clearinghouse, which processes all of the transcripts in
18 America and has record of virtually all of the students, the
19 number is between 4.5 to 4.6 million community college
20 students. So that's my knowledge.

21 Q. And that's not just full-time students. That's anybody at
22 all enrolled for any purpose, correct?

23 A. That is correct.

24 Q. You heard Dr. Tincher-Ladner's testimony that she is
25 anticipating that there will be approximately 450,000

1 invitations issued to academically qualified students in the
2 fall to join PTK. Do you recall that?

3 A. I have not heard that because it was redacted from the
4 copy that I'm supposed to defend myself --

5 Q. She said it in open court. Do you recall her testifying
6 to that fact?

7 A. I don't remember the specifics.

8 Q. Okay. If, if she were to have said that, what is -- well,
9 regardless of whether she said it, what is 10 percent of
10 4.6 million?

11 A. In a vacuum --

12 Q. What is ten percent of 4.6 million people?

13 A. That question's response --

14 Q. Is what?

15 A. -- is 450,000.

16 Q. The same number that Dr. Tincher-Ladner said is being
17 invited next fall to join PTK.

18 When did you become aware that the total number of
19 students currently enrolled in community colleges in the United
20 States is roughly 4.6 million people?

21 A. I would like a chance to address the previous question.

22 Q. No. Your lawyer can ask you questions. I'm asking you
23 now, when did you become aware of that number, 4.6 million?
24 Today, yesterday, the day before, ten months ago?

25 A. I would say that I remember learning it during probably

1 the first week of this lawsuit.

2 Q. Okay. So that number, 4.6 million, has not changed since
3 2022?

4 A. Well, the number that just -- and this is important -- the
5 number that Dr. Tincher-Ladner just stated was 17.5 million,
6 which is a clear fabrication. So the numbers that we are
7 seeing here, I mean, they are unharmonious. And yeah, I
8 believe the number is 4.5 million, and we will discuss that
9 extensively.

10 Q. So if PTK is inviting 450,000 people to join PTK and the
11 total population of the community college students is 4.5 or
12 4.6 million, it is true, then, isn't it, that PTK is inviting
13 the top ten percent of the class to become a member?

14 A. That is completely and blatantly false.

15 Q. My math must be off.

16 A. It's not a math issue. It's a deception issue.

17 Q. Your websites also accuse PTK of engaging in an attempted
18 monopolization, and that means that PTK is trying to take over
19 the community college honor society market to your detriment,
20 right?

21 A. That is correct.

22 Q. You told the Court through your lawyer and also through
23 your declaration back in March that you actually had taken a
24 third of the business away from PTK. Isn't that right?

25 A. I think that's a misstatement. I believe --

1 Q. That's what you said in your declaration, Mr. Moradian.

2 A. I believe -- well, I would like to see the declaration so
3 we can discuss it.

4 Q. And your lawyer also told the Court verbatim that the
5 motivation for filing this lawsuit to begin with was in
6 retaliation for you taking a third of the business away from
7 PTK. Do you not recall that? I have the transcript right
8 here. We can go look at it.

9 A. Would you please show it.

10 Q. Would you agree with me that if a company such as yours --
11 actually, if a company such as PTK is losing a third of its
12 business to an upstart like your company, that's not very
13 effective monopolization, is it?

14 A. To be clear, PTK's numbers have not gone down since this
15 period you are talking. They have not lost one-third of market
16 share.

17 Q. Then why did you say it in your declaration --

18 A. I didn't say --

19 Q. Mr. Moradian --

20 **THE COURT:** No, no, no, Mr. Polak.

21 **MR. POLAK:** I just need to get my answer to my
22 question out, but I will wait.

23 **THE COURT:** Okay. Ask your specific question. I
24 know if you have it in the declaration, you can show him in the
25 declaration -- you can tell him what he said.

1 **MR. POLAK:** I don't want to slow things back --

2 **THE COURT:** We are not going to argue back and forth
3 here. The lawyers will have an opportunity to make any
4 arguments, and the other side will get a chance to redirect the
5 witness.

6 **BY MR. POLAK:**

7 Q. The truth is that you will do anything to hurt Phi Theta
8 Kappa and Dr. Tincher-Ladner. Isn't that true?

9 A. That couldn't be further from the truth.

10 Q. You heard Dr. Tincher-Ladner describe what she believes
11 happened with Michael Calvert and the unauthorized access into
12 PTK's computer system?

13 A. I heard that, yes.

14 Q. Is it true that Michael Calvert accessed PTK's computer
15 system with someone else's credentials?

16 A. I don't know the details about that. I just heard about
17 it about a week ago. I had been flying to and from
18 Mississippi. What I do know is true is that PTK accessed our
19 site, our internal workings, against our terms of service and
20 reverse engineered our website. They looked at our social
21 platforms. They complimented our store and bundling, one
22 directly was cited as complimenting our internal workings, and
23 so I know that there's an extensive record of PTK doing this.

24 I believe that two years later there seems to be a record
25 of us doing a similar investigation. I haven't looked into it

1 or heard more since I heard this just days before our last
2 hearing.

3 Q. So you do not have any information to dispute what
4 Dr. Tincher-Ladner described where Michael Calvert used
5 credentials of someone else and acted as if he was that person
6 and accessed PTK's server? You don't have any information to
7 dispute that, do you?

8 A. I haven't had a chance to even sit and look at anything
9 other than this hearing for the past week.

10 Q. You were at the deposition of PTK's board chair, George
11 Boggs, weren't you?

12 A. Yes.

13 Q. And Dr. Boggs is 80 years old? Do you recall him
14 testifying that he is 80 years old?

15 A. I don't recall his exact age.

16 Q. You sat through his entire deposition, and at the end,
17 while everyone was packing their stuff away, you went up to him
18 and threatened him that you would file an IRS complaint about
19 PTK, alleging that PTK had fraudulently filed a PPP2
20 application. Isn't that true?

21 A. That is, again, as far from the truth as you can get. Mr.
22 Polak, you were standing within a foot to two feet of the
23 discussion. It was very friendly, amicable. We shook hands
24 and we discussed. I don't see that you're testifying to that
25 happening, and it's because it didn't happen.

1 Q. Well, if he remembers it differently, so be it. But you
2 don't deny bringing up the PPP2 issue to him in that side bar
3 conversation while everyone else was packing their stuff up and
4 you were talking to this 80-year-old man? You don't deny
5 bringing it up?

6 **THE WITNESS:** Your Honor, PPP2 fraud is a big issue.

7 **THE COURT:** Answer the question. Did you bring it
8 up?

9 A. So in the course of that conversation, the only context I
10 brought it up in is that I'm not here to bring awareness to the
11 issue. I don't care about -- it's not my issue about PPP2, but
12 it doesn't seem like he's informed about his own organization.
13 And so to the extent I brought it up, it was just an awareness
14 that you should be aware of this, and nothing more was said
15 than that.

16 **BY MR. POLAK:**

17 Q. Let's look at what you told me at your deposition when I
18 asked you about this.

19 A. Sure.

20 Q. Look at page 11. I'll just read it into the record.

21 **THE COURT:** Do you have a hard copy to show him? I'm
22 sorry. Ms. Summers had to run out.

23 **MR. POLAK:** I do have a hard copy of it. Actually,
24 I've got -- this is the transcript.

25 **THE COURT:** Give it to him because he will need it.

1 **BY MR. POLAK:**

2 Q. Let's go to page 11, lines 9 through 15. This is
3 describing the conversation that you had with Dr. Boggs.

4 "Well, we discussed the lack of knowledge about the
5 lawsuit" --

6 **THE COURT:** Slow down.

7 **BY MR. POLAK:**

8 Q. We are on page 11, line 9.

9 A. What subpage?

10 Q. Page 11.

11 A. There are four pages.

12 Q. It's the transcript page 11, which is up in the right-hand
13 corner.

14 A. Thank you.

15 **THE COURT:** And this is the deposition of whom?

16 **MR. POLAK:** Of Mr. Moradian, dated May 3, 2024.

17 **BY MR. POLAK:**

18 Q. This is the answer: "Well, we discussed the lack of
19 knowledge about the lawsuit, with him being the board member.
20 We discussed their known issues, one of them being, you know,
21 PPP2, and, you know, the issues around that, and, you know, not
22 really complying with the laws there, and that, you know, as
23 the chair member, board, he should, you know, be aware of
24 that."

25 And we go on to page 12, line 9 through 12. "And he

1 should be aware. I mean, the fact of the matter is, if there
2 is a PPP2 violation, we all have a fiduciary duty. He has a
3 fiduciary duty to be aware of and to make adjustments as
4 needed."

5 And your testimony is that's not a threat to this
6 80-year-old man, who's the board chair, that you're going to
7 drop a dime to the IRS about this PPP2 issue?

8 A. Of course not.

9 Q. And if Dr. Boggs remembers it differently, that's just a
10 disagreement between you two?

11 A. I haven't heard anything that Dr. Boggs remembers it
12 otherwise, and I don't believe that to be the case.

13 Q. You go on to talk on page 14. You gave me this following
14 explanation as to why you even brought it up to Dr. Boggs.

15 Line 14, line 5 through 25. "Well, I think it's front and
16 center in a case like this. You know, when you are talking
17 about trademark and trade dress, you're also talking about
18 reputation and reputational issues."

19 **THE COURT:** Slow down. Slow down.

20 **MR. POLAK:** Thank you.

21 **BY MR. POLAK:**

22 Q. "And this ties directly into that. If an organization is
23 committing fraud against the government, that's a reputational
24 issue. I mean, that is an issue. And this is an issue out
25 there."

1 So you accused -- you accused PTK, in front of Dr. Boggs,
2 in this conversation of committing fraud.

3 A. Firstly --

4 Q. That's what you told me at the deposition, Mr. Moradian.

5 A. This is a deposition transcript, and Dr. Boggs was not
6 here, so you are mischaracterizing the statement.

7 Q. I'm using your words, Mr. Moradian. You told me that you
8 used the fraud word in your conversation with Dr. Boggs. That
9 is what motivated you to bring it up to him.

10 A. What we are seeing here is another in the track record of
11 silencing voices. You know, if there is an issue, which there
12 has been nothing to disprove this issue, then Dr. Boggs does
13 have a fiduciary duty. He is the chairman of the board. We
14 all have a fiduciary duty. And setting the record straight,
15 you know, we have had months to look at this --

16 **THE COURT:** We are going to hear arguments on all
17 this. I just want answers to questions and questions that can
18 be answered. And it's okay to say yes or no to any question,
19 or I don't know.

20 **THE WITNESS:** Yes, Your Honor.

21 **BY MR. POLAK:**

22 Q. Going back to the websites, if the Court orders you to
23 take all of this down, the social media posts, the websites,
24 including the ones that you claim that don't exist that we just
25 looked at, what is going to stop you from finding some other

1 medium to put it in? Hard copy letters. It's hard for me to
2 imagine what else there is you could come up with, but I never
3 thought in a million years you would go publish 5,000 websites
4 of this either.

5 If the Court orders you specifically, take down those
6 websites, what is it that's going to prevent you from going and
7 putting it in another form?

8 A. This sounds like a limit on speech, but I won't discuss
9 that. You know, I will honor the word of the Court devoutly
10 and closely. I am -- really, that is my intention.

11 Q. I get that, Mr. Moradian, but the Court told you before
12 that the content, the content of the survey was what was
13 malicious. And he said don't use it again. And yeah, it was
14 in the context of the surveys, but you used the same content
15 again here today in these 5,000 websites in a worse way. So
16 why should we believe you now that you're not going to do it
17 again?

18 **MR. NEWMAN:** Objection. Counsel is arguing --

19 **THE COURT:** Objection sustained.

20 **BY MR. POLAK:**

21 Q. You've asked for a bond here. How does taking down all of
22 these websites and social media posts hurt your organization?

23 A. Can you provide more clarity to what you are talking
24 about?

25 Q. You're moving -- your paper is responding to this request.

1 It says that taking down all of these websites and social media
2 posts will hurt your company.

3 A. Can you please show me that?

4 Q. Did you not make that statement? Do you not have any
5 evidence to show that you've been hurt?

6 A. I'm not sure what you are referencing, and I would like to
7 see that.

8 Q. Okay. Regardless of the reference, will taking down all
9 of these websites and social media posts hurt your company in
10 some way?

11 A. It will hurt the general public most of all.

12 Q. Not asking about the general public. I'm asking about
13 your company.

14 A. Of course the time and effort is a barrier. It's part of
15 the tactic you are utilizing here. So to the effect that we
16 have to sit and manually deal with this as opposed to creating
17 value for students, you know, working on this litigation, yes,
18 that would be burdensome.

19 **MR. POLAK:** We are going to look at the transcript.
20 If we can put this up on the Elmo. To go back to the point I
21 was making before.

22 **BY MR. POLAK:**

23 Q. This is Mr. Newman's argument to you, Your Honor. Halfway
24 through the paragraph on page 133, line 14, based upon --

25 **THE COURT:** That's the transcript from which hearing?

1 **MR. POLAK:** Evidentiary hearing on March 27, 2024.
2 This is the injunction hearing.

3 **THE COURT:** Okay.

4 **BY MR. POLAK:**

5 Q. I'm quoting. "Based upon the surveys that Honor Society
6 has done, it appears that PTK has lost over a third of its
7 membership to Honor Society through unlawful and competitive
8 measures."

9 **MR. POLAK:** I will also ask the Court to take notice
10 of Mr. Moradian's declaration that was tendered in connection
11 with that where he said something roughly to that same effect.
12 And that would be page 4, I believe it's starting at 25. It's
13 document number 120-1, starting at paragraph 25, and I think it
14 goes on through paragraph 27, 28.

15 **THE COURT:** And that's paragraph 25 of his
16 declaration?

17 **MR. POLAK:** Of his declaration that's a part of the
18 Court's docket and record. I pass the witness, Your Honor.

19 **THE WITNESS:** Can I complete a statement to that,
20 what he was asking me?

21 **THE COURT:** I guess he has no more questions.

22 **THE WITNESS:** Okay. Thank you.

23 **DIRECT EXAMINATION**

24 **BY MR. NEWMAN:**

25 Q. Good morning, Mr. Moradian.

1 A. Good morning.

2 Q. Did you attend college?

3 A. Yes, I did.

4 Q. Where?

5 A. I attended the University of California, Los Angeles.

6 Q. What was your major and minor?

7 A. I studied business economics and a minor in accounting.

8 Q. And after you obtained the economics and accounting
9 degrees from UCLA, did you take employment?

10 A. Yes, I did.

11 Q. What was that?

12 A. I joined KPMG, which is one of the big four public
13 accounting firms.

14 Q. And then sometime after KPMG, did you start a company?

15 A. Yes, I did.

16 Q. What was that?

17 A. I started CampusBuddy.com.

18 Q. What is CampusBuddy.com?

19 A. CampusBuddy was one of the original Facebook apps that was
20 meant to connect people with their school and their courses.

21 We used public records in an innovative way to bring
22 transparency to the process of selecting your courses, for the
23 first time being able to see how professors grade, and what
24 classes are easy or hard. This was a groundbreaking tool that
25 millions of college students used. They saw their courses and

1 their classmates in their courses, and it was well received,
2 published in Techcrunch, Mashable, as well as many other tech
3 and educational resources.

4 Q. And why was it important to you to provide that level of
5 transparency through CampusBuddy that had never been available
6 before?

7 A. I think it was crucial at the time, and transparency is
8 even more crucial now, and that's because consumers don't have
9 full information, it's an opaque industry, to know how
10 educational operates, what operates in the space, and being
11 able to truly understand what course can help you advance to
12 pursue your goals. You know, if a course is going to derail
13 your GPA, you may not get into that Harvard or Yale that you
14 dreamed of. And to me, it was very important to help create
15 that level of transparency. As consumers, students have a
16 right to know what they are paying for.

17 Q. What year did you form CampusBuddy?

18 A. That was in 2007.

19 Q. Sometime after that, did you form CollegeBudget.com?

20 A. Yes.

21 Q. What year was that?

22 A. I believe CollegeBudget.com was launched in 2010.

23 Q. What is College Budget?

24 A. It was a very innovative tool that used group buying and
25 collective power to help students save money on educational and

1 discretionary purchases. And it basically collected a million
2 plus consumers and let them negotiate with people from textbook
3 companies, to student loan, to American Apparel and Skype, some
4 of the largest national companies, to help them save dramatic
5 amounts of money, and we saved students millions of dollars in
6 the process.

7 Q. And while you were running CollegeBudget.com, did you
8 apply to and were you accepted to the Harvard Business School?

9 A. Well, while I was running these websites, they were very
10 well regarded. The U.S. Department of State profiled me in an
11 article about "Why did you become an entrepreneur," which they
12 disseminated worldwide, in order to show the merits of
13 entrepreneurship, and we were in the Entrepreneur's
14 Businessweek's 25 best entrepreneurs. And that type of
15 attention to the services that we were providing I think really
16 helped catapult me and the attention of what I'm capable of
17 doing and the change that we can create to business schools
18 that I applied to.

19 Q. Were you accepted into the Harvard Business School?

20 A. Yes, I was.

21 Q. And after that acceptance, what did you do to decide
22 whether or not to attend?

23 A. When I was admitted to Harvard Business School and
24 because, you know, my websites were really well received and in
25 the public sphere, we actually asked our consumers and the

1 general public to vote on whether they believed it would be
2 best for me to pursue Harvard Business School or to continue
3 down the path of entrepreneurship and innovation.

4 Q. Did you do that through a survey?

5 A. Yes, I did.

6 Q. Was that survey ultimately published in the *Washington*
7 *Post*?

8 A. Yes, it was.

9 Q. Have you been doing surveys in connection with your
10 business ever since that time?

11 A. Yes.

12 Q. In or around 2012, did you start Honor Society?

13 A. I started researching and building towards Honor Society
14 at that time, yes.

15 Q. And what is Honor Society?

16 A. Honor Society is an inclusive academic and professional
17 platform that's meant to help people achieve their goals and
18 their dreams. It's not meant to be an exclusive network. It's
19 meant to be inclusive and to streamline the process to leave
20 nobody behind, to make sure that the people who aren't
21 necessarily reaching a level such as Phi Beta Kappa, which is
22 the highest and most prestigious honor society, to give them
23 the tools to have hope and to believe and to work towards their
24 goals. That was the real driver behind creating our honor
25 society.

1 Q. Is Honor Society a membership club?

2 A. Yes, it is.

3 Q. And what do members get under that membership?

4 A. They get a tremendous amount of goods. So they get
5 benefits, a scholarship platform to apply for scholarships,
6 community, member events and trips, recognition, and a host of
7 career tools, namely our Career Edge tool, and broadly a type
8 of lifetime support to help them go further.

9 Q. Is it a membership club kind of like the American
10 Automobile Association or American Association of Retired
11 Persons?

12 A. I believe that is right, yes, because we are an affinity
13 group meant to help a whole cohort of people.

14 Q. Like those, does Honor Society offer health care benefits?

15 A. We offer health care discounts, yes, we do.

16 Q. Does Honor Society offer restaurant discounts?

17 A. At over 18,000 restaurants in America, yes, we do.

18 Q. And Honor Society has a benefit hub?

19 A. That is correct. It's a tool that allows people to get
20 discounts across the nation at things like events, amusement
21 parks, and discretionary purchases, which is very well
22 received.

23 Q. Does Honor Society have a service called Career Edge?

24 A. Yes, we do.

25 Q. When did Career Edge begin?

1 A. Career Edge began I believe in 2014 or 2015. By 2016, we
2 were using it so much that we appended the common law trademark
3 to the usage of that term on our cite to make it clear that the
4 Career Edge tool is something that we offer for our consumers,
5 and we believe we are building a brand on that.

6 Q. What is the Career Edge tool?

7 A. The Career Edge tool, it starts with access to Vault
8 Career Guides. It's a tool that has over 8,000 company
9 profiles, industry profiles, interviewing tips and tricks, and
10 it was really, I believe, the tool that helped me get my first
11 job at KPMG. So I believe in it so much that we actually
12 bought an expensive license to be able to offer it to all of
13 our membership.

14 Q. In addition to being a membership club, is Honor Society
15 also an honor society?

16 A. I believe it is.

17 Q. What is an honor society?

18 A. So an honor society is a group, an academic group that
19 helps recognize students and provide them the tools for
20 leadership and going further. It's commonly understood that
21 they can offer things like scholarships and tools and resources
22 to their group.

23 Q. And how does Honor Society function not as a membership
24 club but as an honor society?

25 A. Sure. I think there are many ways. I think the first one

1 is that we created a GPA tier system that was created in order
2 to leave nobody behind. So if you have a 3.2 GPA, you are a
3 honor student, at 3.5, you are a high honors, and at 3.8, you
4 are at highest honors. But crucially, importantly, we state
5 that this is an inclusive society meant for everybody to join.
6 And the reason is because that while we believe in the merits
7 of academic recognition, we also know that this leaves people
8 behind. The people that can't qualify, it perpetuates a
9 systemic inequity, because if you can't --

10 **THE COURT:** Slow down.

11 **THE WITNESS:** I'm sorry. I'm just passionate about
12 this.

13 **BY MR. NEWMAN:**

14 Q. You are going a mile a minute, so if you could slow down,
15 I think that the court reporter --

16 A. I'm sorry.

17 Q. -- would be really grateful. I think you were testifying
18 about how honor functions as an honor society. Would you like
19 to finish that testimony?

20 A. Yes, sir. By giving access to everybody, not just those
21 who receive an arbitrary GPA, we are making sure that there's
22 access. We are making sure that students don't get left
23 behind, because there is known systemic inequity in higher
24 education and education. The second that you take a group and
25 say, hey, you've achieved, so we are going to give you the

1 tools to achieve more, then, by definition, those people that
2 don't receive these tools are left behind.

3 And so this is exacerbating the way honor societies are
4 set up. It is an exacerbating systemic inequity, because you
5 can't, with a straight face, sit and say by giving
6 scholarships, transfer scholarships, tools to people doesn't
7 leave behind the people who don't have access.

8 So in building our Honor Society, our main goal, our
9 prerogative, and something that distinguishes us from societies
10 like Phi Beta Kappa, Phi Kappa Phi, the original honor
11 societies, and even the ones that have come along, like Phi
12 Beta Kappa, is that our reason for existence is to help
13 everybody, to push people ahead, and to maximize their
14 leadership and give them hope. This is a known -- widely known
15 practice in honor society space, and it is one that I deeply
16 believe in.

17 Q. Does Honor Society compete in multiple markets in the
18 honor society space?

19 A. Yes, we do.

20 Q. What are those?

21 A. So predominantly, we sought to be a four-year honor
22 society, but when we launched, we knew that this was meant to
23 be a resource for all. And so we also operate in the high
24 school space. We operate in the graduate school space. We
25 operate in the professional and alumni space. And we operate

1 in the community college and technical college spaces.

2 Q. Why do you believe each of those spaces are separate
3 markets?

4 A. Well, they are crucially separated because a student at
5 UCLA can't join Phi Theta Kappa. Alternatively, a student at
6 Hinds Community College can't attend Phi Beta Kappa at Harvard
7 or any chapter of Phi Beta Kappa. They only serve their
8 addressable market, and it's important that there's an
9 opportunity for people to have selection and choice in
10 competition within each of these marketplaces.

11 Q. Do you know what percent of your business is limited to
12 that two-year community college market?

13 A. Roughly, yes.

14 Q. What is that percent?

15 A. It is approximately ten percent.

16 Q. So 90 percent of your business is for markets outside of
17 the community college base and only ten percent is for the
18 community college base?

19 A. That's right. We only have about ten percent of our
20 members that come in the whole community college space,
21 including those that may not qualify for other memberships,
22 such as Phi Theta Kappa.

23 Q. Is there a GPA requirement to join Honor Society?

24 A. No.

25 Q. Why not?

1 A. Because we believe that it perpetuates systemic inequities
2 and is a structural bias, and that we believe and our model is
3 to make sure that that doesn't punish people who need the tools
4 to go further. And this is a practice that is well established
5 in our space.

6 And I'm not here to say that other honor societies
7 shouldn't exist. I'm just here to say that there should be an
8 option for everybody.

9 Q. Do you have an understanding whether any traditional honor
10 societies lacked a GPA requirement?

11 A. Yes, I do.

12 Q. And what were those?

13 A. Well, Phi Beta Kappa, which is considered the oldest and
14 the most prestigious honor society, which has no relationship
15 to Phi Theta Kappa, and it is widely known they are separate
16 organizations. So I just want to clarify that. Phi Beta Kappa
17 didn't have a GPA restriction for over 150 years, from 1776 to
18 approximately the 1920s, and there was a debate, a literary
19 debate and scholarly club.

20 Q. And are you aware of other reputable honor societies today
21 that lack a GPA requirement?

22 A. Yes, I am.

23 Q. What are a couple of examples of those?

24 A. Well, I believe there are many, but I would like to start
25 with the National Adult Education Honor Society, which deals in

1 the community college space primarily. They have been around
2 since 1990, I believe, and make it exceedingly clear that there
3 is no GPA restriction.

4 Q. Does Honor Society provide a scholarship platform?

5 A. We do offer a scholarships platform. And there are more
6 honor societies which I would like to discuss. In terms of our
7 scholarship platform, we offer students the opportunity to
8 access hundreds of scholarships throughout our platform, and
9 it's open to everybody without payment. It's a tool that we've
10 had since the beginning, and so we are actually bringing
11 scholarships in front of students.

12 But we also have funded scholarships, and we funded the
13 Honor Society Foundation which gives scholarships. So to that
14 effect, we have given over a half a million dollars directly to
15 students to help them further their -- to hundreds of students
16 to help them further their educational opportunities.

17 Q. Does Honor Society assist in job placement?

18 A. Yes, we have our Career Edge tool, and the Career Edge
19 tool has a job board, it has a resumé uploader and helps people
20 both find jobs and connect them again with our Vault Career
21 Guide where they can research jobs.

22 Q. Does Honor Society help students find mentors?

23 A. Yes, we have a mentorship platform within our site that
24 connects people both with mentors and even allows them to
25 become a mentor. So it's a tool that helps our society

1 essentially help and be helped by others in their shoes.

2 Q. Are you familiar with the term "regalia"?

3 A. Yes, I am.

4 Q. What is regalia?

5 A. So regalia is -- actually, there are many definitions of
6 what a regalia is. It starts with a -- it's an honorary piece
7 of accessory originally used in royal hierarchies, militaries,
8 but it is also in the educational space. So when you graduate,
9 people wear regalia of their school, their fraternity,
10 sorority, honor societies, clubs, many things.

11 Q. Does Honor Society's regalia have any colors?

12 A. Yes.

13 Q. What are the colors?

14 A. The stole is gold, and we also use blue in the cord, so
15 gold and blue.

16 Q. Why did Honor Society choose blue and gold?

17 A. Well, Honor Society blue and gold is used because, first,
18 they are the most common colors in honor societies by far. Phi
19 Beta Kappa, the original honor society, uses blue and gold, as
20 does Phi Kappa Phi, as does Golden Key, which I was a member
21 of. UCLA is blue and gold. But I think that blue and gold are
22 used because gold is the color of success.

23 Our Olympic medals, the first place is gold. And blue,
24 like a blue ribbon at a carnival, is also a symbol for success.
25 So for those reasons, my and many alma maters, like UCLA and

1 Michigan, also adorn themselves with blue and gold. And that
2 is just a very common academic color, and it's, if not the
3 majority, many of the most influential honor societies dating
4 back to 1776 use blue and gold.

5 Q. What other honor societies use blue and gold regalia?

6 A. The honor societies that use blue and gold are Phi Beta
7 Kappa, from 1776, Phi Kappa Phi, from the 1800s, which I
8 believe Dr. Tincher-Ladner is a member of, based on her
9 LinkedIn. Golden Key Honor Society, which has been around for
10 about 50 or 60 years, Blue Key Honor Society, Omicron Delta
11 Kappa, which has been around since the 1800s, uses blue and
12 gold. Sigma Xi, which has been around since the 1800s used
13 blue and gold. The Salute Veterans Honor Society as well uses
14 blue and gold. Then many of the specialized honor societies,
15 such as Psi Chi, which is in the community college space, uses
16 blue and gold and gold regalia, Psi Beta Mu -- sorry, Mu Alpha
17 Theta, which is a mathematics honor society, uses blue and
18 gold. And Mortar Board uses gold stoles. There are many honor
19 societies. I would say I'm about a quarter through the list.

20 Q. Does Honor Society conduct events for its members?

21 A. Yes, we do.

22 Q. What type of events?

23 A. We host member trips, member banquets, and more commonly
24 lately, we partner with MBA and NHL teams to give our members
25 exclusive experiences with the teams, and they find it to be a

1 great camaraderie within the community and also to do exclusive
2 things with these teams.

3 Q. What types of events have you done with the professional
4 teams?

5 A. Sure. So with the Vegas Golden Eggs, for example, our
6 group was able to hold the flag and be on the ice for the
7 Pledge of Allegiance, and that was a very special member
8 benefit for that group. We did the same thing in Los Angeles
9 with the Kings, where members were able to go up on there, and
10 many others.

11 Q. Have you ever held an event here in Jackson?

12 A. Yes, we have.

13 Q. What was that event?

14 A. We held an event at the Highball Bowling Lanes in the
15 Fondren area. It was attended by several members, and we had a
16 bowling night, and we catered food, and we were able to connect
17 with the members here in Jackson.

18 Q. And you have had events in other cities?

19 A. Yes, that's right.

20 Q. Los Angeles?

21 A. Yes.

22 Q. Houston?

23 A. With the Houston Rockets, yes.

24 Q. And New Orleans?

25 A. With the Pelicans, with exclusive content, yes.

1 Q. Atlanta?

2 A. Yes, with the Atlanta Hawks.

3 Q. Chicago?

4 A. That was a great event where the Bulls started taking our
5 members behind the scenes to get a tour of working for the
6 Chicago Bulls and to understand how sports management works.
7 That was one of my personal favorites.

8 Q. Philadelphia?

9 A. Yes. We were honored on the court during the game, our
10 members from Philadelphia, and that was a special experience
11 for many of our members. I believe that footage is on YouTube
12 today.

13 Q. Indiana?

14 A. Yes, with the Indiana Pacers.

15 Q. When a member signs up with Honor Society, Honor Society
16 sometimes charges a fee; is that correct?

17 A. There are options to have membership dues, yes.

18 Q. But not everything requires a fee; is that right?

19 A. That is right.

20 Q. When consumers pay fees to Honor Society, does Honor
21 Society have a refund policy?

22 A. Yes, we do.

23 Q. What is the refund policy?

24 A. So anybody can get a refund from our organization for any
25 reason or for no reason. This is really to ensure that members

1 are satisfied because we want to make sure that people want to
2 be here for the right reasons and that they want to engage with
3 our platform. If they don't feel like it is worth it, we don't
4 want to waste their time or money. This is in contrast to many
5 other honor societies, such as Phi Theta Kappa, that don't have
6 a refund policy at all.

7 Q. In connection with the honor society business, I think we
8 have heard testimony that honor societies use public records
9 requests; is that right?

10 A. That's right.

11 Q. When did Honor Society start utilizing public records
12 requests in connection with its business?

13 A. We started using public records from before we even
14 launched publicly.

15 Q. Has Honor Society used public records like the FOIA
16 requests consistently since the beginning of its business?

17 A. Yes, we use them every year.

18 Q. What for?

19 A. For learning about our market, identifying high achievers,
20 such as through the dean's list, chancellor's list, president's
21 list, any awards they may receive, and also by gaining general
22 knowledge of the institutions that we work with and the
23 students that go there.

24 Q. How frequently has Honor Society sent out public records
25 requests since it began?

1 A. So we send out requests every single year. I would say
2 generally about one to three times per year, but without
3 exception, every year we do public records.

4 Q. What was Honor Society's first exposure to PTK?

5 A. The first exposure that I can recall, and it was really
6 the only exposure that I know of prior to the lawsuit, was
7 being at the National Association of College Admissions
8 Counselors where we were walking around and connecting with
9 others in the higher education space.

10 Amongst the tables, I noticed there was a table for Phi
11 Theta Kappa. I wasn't really sure what that was, so I used
12 Instagram to confirm with me that this is an honor society, to
13 confirm who they are and what they do, and I was surprised to
14 even learn that -- I didn't understand at all at that time why
15 would a community college honor society be at a four-year
16 college fair. So that piqued by interest, and I went over and
17 I confidently and amicably introduced myself, I talked about
18 who we are and what we do. I thought we had a great
19 conversation, and I handed my business card over and said,
20 Please feel free to contact me at any time.

21 Q. What year was that?

22 A. That was in 2018.

23 Q. Before 2018, had you ever heard of PTK?

24 A. To the only extent that we've heard about it, and the
25 discovery shows this, we have only heard or talked about them

1 in a group setting, usually when discussing five to 50 to 60
2 honor societies. We've never really talked about PTK
3 individually at all. It's never been a conversation within our
4 team, which diametrically contrasts with how PTK has viewed us.

5 Q. And before this lawsuit, did Honor Society ever conduct
6 competitive research on PTK?

7 A. No, not on PTK.

8 Q. Why not?

9 A. We didn't view them as somebody that merited a competitive
10 study. In honesty, we view the honor society space as an
11 accreditive accretion area, where societies can help one
12 another, they can grow, there are tools and resources that you
13 can provide one another. We never viewed this as a kill or be
14 killed competition which PTK, to our knowledge now, has taken
15 from even before the discovery period of 2016. So we never
16 felt a need to study them.

17 Q. Do you have an understanding whether PTK conducted
18 competitive research against honor society?

19 A. Yes, we know a lot.

20 Q. What is your understanding of that?

21 A. Well, it starts in discovery in 2016, when an employee of
22 PTK says, HonorSociety.Org, Inc. is really gaining momentum.
23 So, in 2016, they are saying that and they're discussing the
24 momentum we are building.

25 And then from there, it snowballs into them asking schools

1 and telling schools we are a scam, echoing and reinforcing that
2 they should block our domains and not allow us to even have the
3 freedom of communicating with students. They, you know,
4 supported articles that went out that called us a scam, put Xs
5 through our e-mails, and have been essentially degrading and
6 maliciously aligning us -- maligning us within the honor
7 society space the whole way.

8 Q. Did you testify earlier that a PTK employee had
9 surreptitiously accessed Honor Society's systems?

10 A. That's right.

11 Q. What was the nature of that?

12 A. In 2018, a PTK employee took the liberty to joining our
13 website where they screenshot every single page of the sign-up
14 flow, which is against our terms of service for reverse
15 engineering, and our site is explicitly for noncommercial
16 personal use. They then screenshotted the inner workings of
17 our site, including our social platform that is members only,
18 and our graduation regalia section, which were reported back to
19 Dr. Lynn Tincher-Ladner, and she remarked in the discovery that
20 she loves what we are doing with our regalia and asked for it
21 to be --

22 **MR. POLAK:** Objection your Honor, testifying from
23 documents that are not in evidence is just not appropriate. I
24 let the former answer go because it was general enough. That
25 answer there --

1 **THE COURT:** Objection sustained. What issue is
2 before the Court today that we started out on Friday, what's
3 the issue? What's the issue?

4 **MR. NEWMAN:** The issue is malicious intent, and I
5 will point out that PTK spent hours with Dr. Lynn
6 Tincher-Ladner and Michael Moradian, and I can assure the Court
7 that our examination will be a fraction in time, but I think we
8 should be able to explore the same types of areas, and there
9 are allegations of improper conduct and malicious intent, and
10 this goes to that. And I think the record should reflect
11 testimony accordingly.

12 There were hours of testimony that I heard having nothing
13 to do with the issues before the Court. The Court allowed it,
14 and I think the Court should allow this testimony which I think
15 does go to the issues.

16 **MR. POLAK:** The alleged malicious intent of PTK is
17 not at issue here. The only issue before the Court is the
18 malicious intent of the man on the stand and Honor Society.

19 **THE COURT:** And I suppose -- okay. Yeah. I mean,
20 the motion that's been filed by PTK for preliminary injunction,
21 I think, or temporary restraining order, in order to restrain
22 the conduct of Honor Society. I mean, I'm giving you some
23 leeway, but if he is talking about -- is this a justification
24 for why they say he did something, is he testifying that I'm
25 justified in doing whatever I did because of what happened in

1 2016 and 2018, and I've learned in discovery that PTK never
2 liked us in the beginning? I mean, it sounds like that's where
3 we are going. And I don't know if we want to go there.

4 **MR. NEWMAN:** He's testifying that PTK did a certain
5 type of competitive research. Honor Society had never done
6 that, but after PTK did, it responded accordingly. And to the
7 extent --

8 **THE COURT:** Okay. So what justifies -- if the Court
9 believes the testimony so far, what justifies the continuing --
10 if he were to do a survey question along the line of what the
11 Court has said don't do, regardless of what PTK has done, does
12 that matter, I guess is the question. You know, if he's here
13 to testify that I did all of what they've said that they did,
14 but it was because they started research on my company first,
15 does that justify what he might have done after the date of the
16 Court's injunction?

17 **MR. NEWMAN:** I think it goes to PTK's implication
18 that what Honor Society did was improper, when PTK engaged in
19 the same conduct and wasn't improper from their vantage point.

20 **THE COURT:** I will give you some leeway, but the
21 lawyers are going to have an opportunity to argue what it is
22 that the Court ought to be focused on in ruling on the merits
23 before it -- on the merits of this particular motion.

24 The parties do understand that you all are still in the
25 throes of discovery in this case. You have still got stuff

1 pending before Judge Myers, I think. You are still going to be
2 litigating this case. And, you know, you have still got a
3 trial setting scheduled, I think, before a jury at some time
4 next year. And I just want to make sure the parties understand
5 what's before the Court on this emergency motion that the Court
6 stopped all that it had to do to take this up.

7 **MR. NEWMAN:** So what's before the Court is PTK
8 engaged in a series of malicious attacks against Honor Society.
9 Honor Society stayed silent, and at some point it needed to
10 defend its reputation and point to the fact that PTK is the one
11 who is engaged in deceptive practices. So this testimony goes
12 to the fact that there is free speech on both sides, and they
13 want to shut down free speech only on one side.

14 **THE COURT:** I understand that. We are going to argue
15 about what free speech is and what rights people have if this
16 Court violates someone's free speech rights.

17 So, again, I don't want to step on you from trying to put
18 your proof up, but this -- you know, I'm sort of trying to keep
19 things focused on what it is, the motion that's before the
20 Court right now.

21 **MR. NEWMAN:** Thank you.

22 **THE COURT:** All right. You may proceed.

23 **BY MR. NEWMAN:**

24 Q. Do you know whether PTK considered Honor Society a threat
25 to its business?

1 A. Yes, I do.

2 Q. And what is your understanding of that?

3 A. Yes, they highly did. They viewed us as the enemy, the
4 competitor, that they need market share, that they have no
5 problems stealing from competitors, and that, you know,
6 essentially they were going to protect their market share.

7 **MR. POLAK:** Your Honor, same objection I said before.
8 He is testifying about documents and statements that are out of
9 court and are not in the record.

10 **THE COURT:** The Court overrules the objection. I
11 will be able to decipher between the two. I'm the finder of
12 fact today and for Friday's purposes.

13 **BY MR. NEWMAN:**

14 Q. And do you know whether PTK made public statements about
15 Honor Society?

16 A. Yes, they have.

17 Q. And when did that occur?

18 A. Well, that occurred through chapters since the beginning.
19 But most narrowly, the day they filed their lawsuit, which we
20 were totally unaware of and had no communication whatsoever,
21 they filed a press release that called us a lot of maligning
22 things, including, I believe, willfully deceiving or to that
23 effect, and that they should contact the Attorney Generals and
24 the BBB.

25 You know, we didn't even know who these people were when

1 they filed this. Nevertheless, we sat on our hands for two and
2 a half years. We didn't respond because we didn't believe this
3 to be a substantial case. What they filed was about blue and
4 gold, which we know many honor societies use, including in
5 community colleges. The stoles --

6 **THE COURT:** That issue, though -- again, this issue
7 is being litigated, right? This is what your trademark case is
8 about and all of that. I mean, there is a lawsuit.

9 Now, I think the issue before this Court, I think -- now,
10 please help me out if I'm wrong, if I'm wrong. PTK says, look,
11 Judge, he has violated your order that you entered -- not he,
12 but Honor Society has violated the order that you entered on
13 March 28, 2024, the preliminary injunction order.

14 **MR. NEWMAN:** That's not the issue. Mr. Wallace said
15 that they are not alleging a violation of that order.

16 **THE COURT:** Okay. They attempted to prove that that
17 order was not expansive enough?

18 **MR. NEWMAN:** I think what Mr. Wallace said --

19 **THE COURT:** That your order, Judge, is not expansive
20 enough. It doesn't have the right words in it, it doesn't have
21 enough words in it because Honor Society has found a way to get
22 around the -- what we believe, I assume what they believe, is
23 not only the wording but the spirit of the order.

24 I presume that's what I'm going to hear, and I'm going to
25 take in all of the arguments. So I want to get to the facts of

1 this. What happened leading up to the lawsuit, as to why PTK
2 filed the original lawsuit, people can file lawsuits. People
3 can counterclaim, as you all have done. And that lawsuit is
4 being heard. In the midst of that lawsuit, this Court had a
5 preliminary injunction hearing and specifically stated about
6 some survey questions, I think.

7 So I think we need to try to be focused on that. And, you
8 know, to the extent there is ill will between the parties and
9 how long it has been going on, I just -- I don't know how well
10 that resonates with me at this point.

11 **MR. NEWMAN:** Understood, Your Honor. Thank you for
12 that.

13 **BY MR. NEWMAN:**

14 Q. During the course of this lawsuit, before Honor Society
15 filed its counterclaims, did PTK make public statements in
16 addition to the press release about Honor Society?

17 A. Yes.

18 Q. And what was the nature of those communications to the
19 public?

20 A. They communicated to newspapers and other press about our
21 lawsuit. They communicated to all of their chapters and
22 chapter advisors. And I think it's important to know how this
23 ties back is that every single thing that is alleged by PTK at
24 this moment, they have done. They have -- this is a one-sided
25 justice what they are seeking.

1 Q. Let's just stick to the question. I think the Court might
2 be growing impatient. What was the nature of those
3 communications to the public that PTK said?

4 A. So the nature to the public was to take statements and
5 malign us and ask us to be reported to officials. They
6 referenced us as a scam. They've communicated to chapters and
7 school officials of the like, and they've perpetuated their
8 narrative for two years.

9 Q. Did PTK and its chapters post on social media?

10 A. Yes.

11 Q. Do you remember the nature of those posts?

12 A. Yes.

13 Q. What were they?

14 A. They posted "scam alert" with big Xs through our content.
15 As recently as March 1st --

16 **MR. POLAK:** Your Honor, I have to object to this one
17 because I don't know what document he is talking about. I
18 don't know what social media posting he is talking about.
19 There is no document in evidence. If it's something we said,
20 it won't be hearsay, but I've got to know that it actually
21 exists, and I don't have any way to cross-examine this witness
22 about a document that they claim is in existence that we don't
23 have.

24 **THE COURT:** Is there a document?

25 **MR. NEWMAN:** We could present documents, but I'm not

1 presenting them right now.

2 **THE COURT:** He can't testify about what is not in
3 evidence.

4 **MR. NEWMAN:** Okay.

5 **MR. POLAK:** I would move to strike that testimony,
6 Your Honor.

7 **MR. NEWMAN:** I would like to show the witness
8 Exhibit 5 to Moradian.

9 **MR. POLAK:** Is that Defendant's Exhibit 5?

10 **THE COURT:** Is that part of the declaration of Mr.
11 Moradian?

12 **MR. NEWMAN:** Yes, it is Exhibit 5 to the declaration
13 of Mr. Moradian.

14 **THE COURT:** Okay.

15 **BY MR. NEWMAN:**

16 Q. Do you recognize Exhibit 5?

17 A. Yes, I do.

18 Q. What is it?

19 **MR. POLAK:** Your Honor, we objected to this document
20 in the objections that we tendered to the Court, in that it is
21 hearsay. It has been suggested and represented in the prior
22 answers that this is a statement by PTK. It is not. It is
23 made by some poster called Phi Theta Kappa Alumni of Washburn.
24 That's what the document says.

25 **MR. NEWMAN:** He can cross-examine the witness about

1 this.

2 **MR. POLAK:** It hasn't been authenticated either.
3 There are hearsay issues. There are authentication issues,
4 because this is not a business record. It's not an admission
5 by Phi Theta Kappa. It is not even a statement of Phi Theta
6 Kappa. It is not evidence.

7 **THE COURT:** What is your question?

8 **BY MR. NEWMAN:**

9 Q. Do you recognize this document?

10 A. Yes, I do.

11 Q. Where did you first see it?

12 A. On Facebook.com.

13 Q. And did you download it?

14 A. Yes.

15 Q. And who do you understand published it?

16 A. I understand it to be the Phi Theta Kappa chapter and
17 alumni of Washburn.

18 **MR. POLAK:** Objection.

19 **THE COURT:** Hold on.

20 **BY MR. NEWMAN:**

21 Q. What's the nature of the statement?

22 A. Well, it's taking our trademarked content and our
23 registered trademark and putting a scam alert on it, and, you
24 know, repeatedly referring to us as a scam, to be on alert,
25 scam alert, beware, and it calls us a fake group. We are not a

1 fake group. As we've discussed, we have been doing all of
2 these things since 2014.

3 **THE COURT:** Objection sustained. I mean, do we know
4 who posted this? Are you saying that PTK posted this?

5 **MR. NEWMAN:** Your Honor, we are in the midst of
6 discovery. So we had to prepare for this within a week. This
7 was posted by a PTK chapter that gets their information from
8 PTK.

9 **THE COURT:** So what is good for the goose is good for
10 the gander then. I mean, that's why -- I mean, because -- even
11 if this is true, even if PTK did this, even if
12 Ms. Tincher-Ladner did this, what does that have to do with the
13 issue before the Court today?

14 **MR. NEWMAN:** Thank you. PTK engaged in a malicious
15 campaign of speech against our client, who didn't respond until
16 recently. And because there are all of these public statements
17 maligning Honor Society, Honor Society at some point had to
18 respond, had to respond and say, We are not a scam. They are
19 the scam.

20 **THE COURT:** There is this Court's order. I'm looking
21 back at the March 28th order. I know it said refrain from
22 sending the above six survey questions. "Turn over to PTK all
23 responses to surveys distributed." I don't know if that has
24 been done. We will hear about that.

25 **MR. NEWMAN:** It has.

1 **THE COURT:** "Provide PTK with reasonable advance
2 notice should Honor Society desire to use similar but reworded
3 questions in future surveys." I realize we say "in future
4 surveys."

5 **MR. NEWMAN:** In surveys.

6 **THE COURT:** I understand that. I know what the
7 argument is going to be about, but I'm focused on the merits of
8 the motion before me. What's good for the goose may or may not
9 be good for the gander, may, but talking about PTK's bad
10 behavior that's in the midst of being discovered during this
11 lawsuit does little to me, I think, to justify what might have
12 been done after March 28th.

13 **MR. NEWMAN:** It's responding to a campaign.

14 **THE COURT:** So -- okay --

15 **MR. NEWMAN:** Which shows --

16 **THE COURT:** You will be able to argue that he was
17 aware of that after March 28th then.

18 **MR. NEWMAN:** Which shows good faith intent.

19 **THE COURT:** You will be able to argue that. Do you
20 want me to -- okay. You will be able to argue that.

21 **MR. NEWMAN:** Thank you.

22 **THE COURT:** All right.

23 **MR. POLAK:** Just so the record is clear, is this
24 document in evidence or --

25 **THE COURT:** No, this document is not in evidence. I

1 think the objection is rightfully sustained, but he's heard
2 about it, so --

3 **MR. NEWMAN:** So, Your Honor, if we present a whole
4 series of other documents from PTK chapters maligning Honor
5 Society, is the Court going to order that they are hearsay and
6 inadmissible, even though we only had a week to prepare for
7 this and we didn't have a chance to take their depositions to
8 ask questions whether that flowed from the top? Because I have
9 other exhibits like this, several. Should I skip those?

10 **MR. POLAK:** Your Honor, we don't even have this
11 document. It has no Bates number. We have never seen it
12 before. They have pulled it out of thin air, yet this document
13 would have been responsive to document requests that we sent
14 back in April of 2023.

15 **MR. NEWMAN:** That is just false. You had the
16 document in discovery.

17 **MR. POLAK:** I don't see the Bates number on it, Mr.
18 Newman.

19 **THE COURT:** I tell you what. Y'all review what
20 documents you have over the lunch break. We are going to take
21 the lunch break now. We will be back in an hour and 15
22 minutes.

23 I never want to step on a party for making their record
24 and proving whatever case that needs to be proven, but I'd like
25 the parties to think about -- and I will think about it over

1 this lunch break -- I mean, what is the issue before the Court
2 that the parties want me to take care of in light of the motion
3 for preliminary -- temporary restraining order and preliminary
4 injunction that I've been hearing since Friday.

5 And again, all the free speech and all of that stuff will
6 be argued by the lawyers, what handcuffs -- how far does the
7 First Amendment handcuff this Court from doing anything,
8 because I do believe that's Honor Society's argument, the First
9 Amendment does not allow this Court to do anything, no prior
10 restraint and all of that.

11 And I heard some testimony earlier about, you know, not
12 having the opportunity to have corrected the record of the
13 other hearing and not having, you know, quick -- maybe there
14 was some things wrong in the first preliminary injunction, but
15 there has been no motion for reconsideration, there's been
16 nothing to ask the Court to correct anything. There's been no
17 appeal of it, if there could have been an appeal.

18 **MR. NEWMAN:** I think the reason for that, Your Honor,
19 is because it was limited to survey questions, and Honor
20 Society at the time never intended to send that again.

21 **THE COURT:** I've heard from the witness today,
22 though, that there were some things wrong with it, there was
23 some error, there was something wrong with it, but I never
24 heard any motion for reconsideration or anything.

25 **MR. NEWMAN:** That's because the order didn't impact

1 Honor Society's speech because it didn't intend to send those
2 survey questions again, so the order not to didn't impact it,
3 didn't feel a need to appeal. But here there's a request for a
4 much broader injunction, and the Court should understand that
5 Honor Society didn't act maliciously and didn't violate the
6 law.

7 **THE COURT:** And -- but whether the Court can do
8 something is a legal question. And I understand all the
9 testimony one might want to put there, but that's a legal issue
10 at the end of the day. I can assume that everything Honor
11 Society wants to put in is the truth. Right?

12 **MR. NEWMAN:** Yes, Your Honor.

13 **THE COURT:** And from there, I could figure out what
14 it is that -- what it is that might limit this Court's
15 authority under the First Amendment. So assuming everything
16 you say is true, everything, what can the Court do?

17 **MR. NEWMAN:** Or can't just issue an injunction.

18 **THE COURT:** Right. I know that. That's your
19 argument, and that's an argument that's reserved for the
20 lawyers to make.

21 And again, I don't want to step on your toes about trying
22 to prove your case and giving you the sufficient time, to have
23 the same amount of time that the other side has had. But let's
24 focus on what the legal issue will be at the end of the day,
25 you know, because I do see First Amendment blasting throughout

1 the response to PTK's thing. Well, even if PTK wins on
2 everything, Judge, you still can't do anything because they
3 actually didn't win because the First Amendment says that you
4 can't do anything because, you know -- so I will be ready to
5 hear your arguments, and I don't want to make them for you.
6 But I do want the parties to think about what -- what has
7 caused the Court to set aside this time for this hearing on
8 Friday and today with hopefully trying to conclude it today,
9 because if it is not concluded today, you know, I just don't
10 know when it might be.

11 **MR. NEWMAN:** Your Honor, as I noted, PTK got six
12 hours. I'm going to take a fraction of that. I think you will
13 find that a lot of the questions are honed more closely to the
14 issues, but I would like the opportunity to present a case.

15 **THE COURT:** Make sure that the witness answers the
16 questions in a more honed way, then.

17 **MR. NEWMAN:** That's important too. Thank you.

18 **THE COURT:** We will be in recess until 1:30.

19 **(RECESS TAKEN AT 12:11 P.M. UNTIL 1:41 P.M.)**

20 **THE COURT:** Mr. Moradian, you may return to the
21 stand. I always ask is there anything to take up before we
22 resume? No resolution of the matter? Okay. All right.

23 **MR. POLAK:** The only thing we might add, you had
24 asked us to send to counsel those screenshots from the live
25 websites, and Mr. Cowan did that 45 minutes ago, probably. So

1 counsel now has them. I don't know if you need those filed
2 with the Court, but we could do that if you need us to.

3 **THE COURT:** Okay. Yeah, at some point, they should
4 be made a part of this record.

5 **MR. POLAK:** Made a part of this record?

6 **THE COURT:** Uh-huh. Ready?

7 **MR. NEWMAN:** Thank you.

8 **BY MR. NEWMAN:**

9 Q. Mr. Moradian, did you listen to Dr. Tincher-Ladner's
10 testimony yesterday?

11 A. Yes, I did.

12 Q. And she testified about why she believes that PTK members
13 are in the top ten percent of their class. Did you hear that
14 testimony?

15 A. Yes, I did.

16 Q. And what did you understand her methodology to be? I just
17 want to make clear that you understood what she was saying.
18 Actually, strike that. Did you understand that there was a
19 numerator and a denominator?

20 A. Yes, I did.

21 Q. And the numerator is the number of invitees that PTK has
22 per year?

23 A. Yes, I did.

24 Q. And the denominator is the total number of students at the
25 schools where PTK sends invites? Is that your understanding?

1 A. Yes.

2 Q. And doing simple math, top ten percent. Was that your
3 understanding?

4 A. That's what they presented, yes.

5 Q. And Dr. Tincher-Ladner cited an Excel spreadsheet,
6 correct?

7 A. Yes.

8 **MR. POLAK:** Objection. I know we are trying to keep
9 things moving along, but he is leading the witness, and I would
10 object to leading.

11 **THE COURT:** Okay.

12 **MR. NEWMAN:** Your Honor, I am admittedly leading. I
13 could take the witness through --

14 **THE COURT:** Don't lead the witness.

15 **MR. NEWMAN:** Okay. I won't lead the witness. Thank
16 you.

17 **THE COURT:** That's fine. I'm refreshed now. I have
18 candy, I have water. I'm refreshed. So we are good for the
19 next several hours right now.

20 **MR. NEWMAN:** All right. We are good.

21 **BY MR. NEWMAN:**

22 Q. Did you hear Dr. Tincher-Ladner testify about a
23 spreadsheet?

24 A. Yes, I did.

25 Q. And did you understand that spreadsheet to support her

1 calculations?

2 A. I understand that it was intended to support them.

3 However, I refute the calculations.

4 Q. Have you had a chance to review that spreadsheet?

5 A. Not until about 36 hours ago.

6 Q. Why not until 36 hours ago?

7 A. These documents that I needed to defend myself were
8 withheld from me as AEO. I just simply couldn't see them, and
9 I had no idea what I'm defending myself against until 36 hours
10 ago.

11 **MR. POLAK:** Objection. For the record, those were on
12 file last week, and counsel had the opportunity to ask us to
13 allow Mr. Moradian to review those last week. I got an e-mail
14 and a request yesterday for that, or maybe a day and a half ago
15 for that. I just want the record to be clear that we are not
16 withholding anything.

17 **MR. NEWMAN:** That is not true. Would the Court like
18 me to respond, or should I just continue with the questioning?

19 **THE COURT:** You can respond, since it's not true.

20 **MR. NEWMAN:** Okay. Thank you.

21 So there was reference to those materials in a reply brief
22 filed the night before the hearing that we had last week. The
23 actual materials we didn't have a chance to review until after
24 the hearing, and then the very next morning I asked whether I
25 could show those materials to Mr. Moradian, and PTK declined

1 without providing any reason at all. And I kept pressing in a
2 very friendly tone. They didn't respond to my e-mails, so we
3 filed an emergency motion on Monday, and then when we filed the
4 motion, they called and said, okay, we will let you see the
5 materials.

6 So it wasn't as simple as we didn't ask. We did ask time
7 and again. We had to file a motion before they were allowed.

8 **THE COURT:** I do take it from all the testimony that
9 I've heard so far, the parties disagree about how to get to the
10 proper -- the parties use different methodology, I guess, to
11 get to how to calculate the top ten percent. Right?

12 There's a dispute as to whether the top ten percent has
13 been reached by these people or whether it is some other
14 number. Right?

15 **MR. NEWMAN:** There should not be a dispute --

16 **THE COURT:** By "these people," I'm talking about PTK.

17 **MR. NEWMAN:** There should not be a dispute.

18 **THE COURT:** I mean, apparently there is. Some people
19 look at numerator and denominator and do calculations of
20 4.5 million people. I've heard the number 4.6 million. So if
21 450,000 letters went out, there is a dispute whether those
22 letters actually went out to, quote, unquote, the top ten
23 percent. Right?

24 **MR. NEWMAN:** There should not be a dispute.

25 **THE COURT:** But there is, right? There is.

1 **MR. NEWMAN:** Yes, Your Honor.

2 **THE COURT:** There's a real disagreement about that,
3 right?

4 **MR. NEWMAN:** I suppose. I think that PTK knows that
5 it's students are not in the top ten percent.

6 **THE COURT:** That's a matter that's in the big case,
7 right?

8 **MR. NEWMAN:** No, it goes to this little case.

9 **THE COURT:** Okay. All right.

10 **MR. NEWMAN:** Because to the extent that the
11 statements that Honor Society publishes are true, they are
12 protected by the First Amendment.

13 **THE COURT:** Okay.

14 **MR. NEWMAN:** If PTK is going to stipulate that the
15 statements that Honor Society has made are true, then we don't
16 need to go through testimony to establish that they are, but I
17 don't think there's that stipulation.

18 **THE COURT:** Okay. Again, we are going to get a
19 chance to flesh out the argument, but part of the argument is
20 that what you have been doing is defending your -- what Honor
21 Society has been doing is defending its allegations in the
22 lawsuit, right?

23 **MR. NEWMAN:** That is part of it, Your Honor.

24 **THE COURT:** And that's their allegation, right?

25 **MR. NEWMAN:** That's not --

1 **THE COURT:** That's Honor Society's assertion that
2 their ten percent number is the wrong number.

3 **MR. NEWMAN:** Yes.

4 **THE COURT:** Right? And Honor Society, I believe,
5 claims that it has a right to say that because that is a matter
6 of the subject of the litigation.

7 **MR. NEWMAN:** In part, but separately, even if it
8 wasn't a part of the litigation, the fact that PTK is making
9 these false statements that impact the public, Honor Society
10 and every other member of the public has the right to publish
11 material to alert the public to this concern, regardless of
12 whether there's litigation.

13 **THE COURT:** Okay. Make your record. You can ask
14 your question.

15 **MR. NEWMAN:** Thank you.

16 **BY MR. NEWMAN:**

17 Q. Why don't we pull up that spreadsheet, the first page, the
18 analysis tab. And while we are doing that, I'm going to ask
19 you a couple of questions. You testified earlier that you're
20 familiar with the number of students who attend community
21 colleges; is that right?

22 A. Yes, that's right.

23 Q. And where did you get that information?

24 A. National Center of Education Studies and National Student
25 Clearinghouse.

1 Q. And how many students attend community colleges?

2 A. 4.4 in one and 4.5 to 4.6 in another.

3 Q. And PTK has said that they send out 450,000 invites?

4 A. They are saying -- what I heard is that they are going to
5 do that this fall, for only the fall.

6 Q. So that would be ten percent of all students?

7 A. That's what they're saying.

8 Q. Does PTK have a chapter at every school in the country?

9 A. No, they don't.

10 Q. So PTK's chapter is a subset of those?

11 A. That's right.

12 Q. Okay.

13 **MR. NEWMAN:** May we please have the display on the
14 computer.

15 **BY MR. NEWMAN:**

16 Q. Is this a true and correct copy of the spreadsheet that
17 you reviewed?

18 A. Yes.

19 Q. And there's a series of spreadsheets like this?

20 A. Yes.

21 Q. Is this calendar year 2021 to 2022?

22 A. It says so, yes.

23 Q. Okay. And you see on this first page, the analysis tab,
24 the number of students on campus is 15,110,225?

25 A. Yes, that's what I see.

1 Q. Is that -- is it possible that there are 15 million
2 students on campus at PTK chapters?

3 A. No, that is impossible.

4 Q. Why is that impossible?

5 A. Because PTK only serves the community college space, which
6 we established at 4.4 to 4.6 million students, and they are a
7 subset of that.

8 Q. Can we look at the college data tab. Do you see there's
9 columns A, B, C, D?

10 A. Yes.

11 Q. What do you understand column C to be?

12 A. Column C is -- I have not had a chance to fact check the
13 numbers due to the shortness of time I've seen this -- is the
14 number of students enrolled at each of these colleges.

15 Q. What do you understand column D to be?

16 A. Well, if we scroll over column D, which we have in the
17 line here, every college's number is --

18 **THE COURT:** Hold on for a second. Is your question
19 about column B as in boy or D as in David?

20 **MR. NEWMAN:** Thank you for asking for the
21 clarification. It is D as in Derrick.

22 **THE COURT:** Not even David. Okay. Diddly-squat.
23 Okay.

24 **BY MR. NEWMAN:**

25 Q. So you are looking at column D?

1 A. Yes, I am.

2 Q. Continue.

3 A. So I believe --

4 Q. The question is, what does column D show?

5 A. Column D represents an arbitrary load factor that PTK
6 added to their schools. So in B and C, 22,807 is multiplied by
7 67.2 to add an additional 15,000 students plus to Orange Coast
8 College. And it's the same for every university or community
9 college down column D.

10 Q. Has PTK arbitrarily added 67 percent more students in
11 column D?

12 A. Yes, that is correct.

13 Q. And column E as in Edward?

14 A. Can you repeat that?

15 Q. Can you look at column E as in Edward?

16 A. Yes.

17 Q. What do you understand column E to be?

18 A. I understand that to be the PTK invites sent by PTK
19 national headquarters.

20 Q. Do you see several schools where there are zero invites?

21 A. Yes, I do.

22 Q. And did you count the number of schools where there are
23 zero invites?

24 A. Yes, I did.

25 Q. How many are there?

1 A. I believe they was 115.

2 Q. How many students does that represent?

3 A. It represents about 880,000 students, real students,
4 actual students.

5 Q. So schools that have 880,000 students, the spreadsheet
6 shows zero invites; is that your understanding?

7 A. That is right.

8 Q. And what is your understanding as to why there are zero
9 invites when there are all those students?

10 **MR. POLAK:** Objection, calls for speculation. This
11 is a document she prepared. He wouldn't know the answer to
12 that question.

13 **THE COURT:** Objection sustained.

14 **MR. NEWMAN:** I'm asking about his understanding. He
15 has had one day to analyze it. He should have the right to
16 testify about his analysis and why it is incorrect.

17 **THE COURT:** He can't testify why it's incorrect if
18 she prepared it. I mean, does he know it is incorrect?

19 **MR. NEWMAN:** Do they know it is incorrect?

20 **THE COURT:** I mean, he can testify about what he
21 believes his data shows.

22 **MR. NEWMAN:** Right.

23 **MR. POLAK:** I think the question was, what is his
24 understanding of that, which is inherently calling for
25 speculation. Just because he happens to have an opinion, it

1 doesn't mean it is a valid opinion. He has to have some basis
2 to do it.

3 **THE COURT:** Objection sustained.

4 **BY MR. NEWMAN:**

5 Q. And did you see other schools in column E where there is
6 only between 1 and 100 invites?

7 A. Yes, I did.

8 Q. And assuming that those columns in E, where there are zero
9 invites are between 1 and 100, are schools where PTK does not
10 invite students directly, would that deflate the numerator?

11 A. Yes, because they are also inviting outside of that
12 channel.

13 Q. We heard Dr. Tincher-Ladner testify that schools sometimes
14 invite students on their own?

15 A. That's right, from the chapter.

16 Q. And your understanding is that when the chapter invites,
17 that wouldn't be in the numerator because PTK doesn't have
18 those numbers?

19 A. That's right.

20 **MR. POLAK:** Objection, leading.

21 **THE COURT:** Objection overruled.

22 **BY MR. NEWMAN:**

23 Q. You testified, when Mr. Polak asked you questions, that
24 there's about 4.5 million students at community colleges.

25 A. Yes, that's right.

1 Q. And PTK, according to the spreadsheet, did it send out
2 979,000 invitations?

3 A. Yes, I believe that's what it said.

4 Q. So when doing the math on 979,000 invitations and
5 4.5 million college students, what percent of college students
6 are being invited to PTK?

7 A. Off the top of my head, I believe that number would be
8 close to 18 percent.

9 Q. But not every school has a PTK chapter?

10 A. That is right.

11 Q. Do you know how many chapters PTK has?

12 A. I believe it is around 1240.

13 Q. And do you know how many total community colleges there
14 are?

15 A. Yes, I believe it is 1461.

16 Q. So PTK has chapters at about 85 percent of the schools?

17 A. Yes.

18 Q. So if we reduce the number of students in the denominator
19 by 85 percent, then what percent of students at community
20 colleges did PTK invite?

21 A. That would be close to 21 to 22 percent.

22 Q. And the numerator includes invitees who Dr. Tincher-Ladner
23 testified have a 3.5 GPA or a 3.25 GPA and 12 credit units?

24 A. That is right.

25 Q. Are there students who don't have 12 credit units but have

1 higher than a 3.5 GPA?

2 A. Yes, and I was one of them.

3 **MR. POLAK:** Objection, calls for speculation. Lack
4 of foundation.

5 **THE COURT:** Objection overruled.

6 A. Yes, I was a student who took only two community college
7 courses, got As in both of them, and I wouldn't have been
8 included.

9 **BY MR. NEWMAN:**

10 Q. So you had a 4.0 in community college?

11 A. That's right.

12 Q. So you would have a higher GPA than someone with a 3.5 and
13 12 credit units?

14 A. That is correct.

15 Q. But students like you are included in the numerator?

16 A. That's right.

17 Q. Did you prepare a document to aid your testimony in
18 explaining why Dr. Tincher-Ladner's calculations are incorrect?

19 A. Yes, I did.

20 Q. Is it in a PowerPoint presentation?

21 A. Yes, it is.

22 Q. So I'm going to show you that and we can walk through it
23 to help aid your testimony.

24 **MR. POLAK:** We have objections as to the use of that
25 document, Your Honor.

1 **THE COURT:** What's the basis of your objection?

2 **MR. POLAK:** It contains more unauthenticated
3 documents. So authentication is an objection. Two, it
4 contains hearsay. Three, it contains speculation and
5 speculative opinions. And four, it contains what I think could
6 only be identified as inflammatory types of language. I
7 appreciate that as regularly more of a jury issue, and the
8 Court can distinguish between those things, but for the record,
9 we would oppose it under I believe Rule 403.

10 So it's lack of authentication, contains hearsay, contains
11 speculation, and it's -- while it might contain relevant
12 information, it's prejudicial. And I can point to the Court
13 what it is, but you don't have the benefit of the document
14 right now.

15 **THE COURT:** Right. It's for demonstrative purposes
16 only for right now, at least.

17 **MR. NEWMAN:** We are not offering any portion as
18 evidence. We are allowing the witness to explain these complex
19 calculations, and the presentation that he prepared makes it
20 easier, we believe, for the Court to understand. But we don't
21 think it is going to confuse the Court or be prejudicial. We
22 think the Court understands what's going on and can evaluate it
23 accordingly.

24 **MR. POLAK:** It does contain information -- it
25 contains an actual screenshot of documents or information from

1 a document this Court has already determined is inadmissible
2 because it wasn't properly authenticated. It was a FOIA
3 document. They are trying to get it in the back door through a
4 demonstrative, when they wouldn't be able to get it in the
5 front door as an actual document.

6 **THE COURT:** Put up the document and let me see what
7 it is.

8 **MR. POLAK:** The page that is specific to that is your
9 -- page 6 related to Triton College.

10 **MR. NEWMAN:** Your Honor, the Triton College --

11 **MR. POLAK:** Can we just show that document so the
12 judge can see it?

13 **MR. NEWMAN:** Your Honor, the Triton College
14 exhibit --

15 **MR. POLAK:** Exhibit 6.

16 **MR. NEWMAN:** -- was not attached to our papers
17 because we consider it a response in rebuttal to
18 Dr. Tincher-Ladner's testimony. It was produced in discovery.
19 So before I show the illustrative exhibit, may I ask questions
20 to this witness about this document to authenticate it and ask
21 whether we can admit it?

22 **THE COURT:** What is the document that is the subject
23 of this -- I take it this whole demonstrative is the subject of
24 an objection. Is that right?

25 **MR. POLAK:** That is correct, Your Honor. But

1 specific to this issue of the FOIA and the inclusion of
2 evidence you have already said shouldn't be admitted, that
3 would be, I believe, page 6 of this exhibit, and I don't
4 know -- he is displaying the particular document, which is this
5 Triton College, River Grove, Illinois, a community college.

6 Now, the document that you see there in front of you is a
7 document that was not created by Honor Society. It was a
8 document that was created by that community college and
9 provided, supposedly, in response to a FOIA request.

10 **MR. NEWMAN:** May I ask the witness questions to try
11 and authenticate it and the Court can rule?

12 **THE COURT:** Let him --

13 **MR. POLAK:** For all the reasons that we've talked
14 about before, being that while this witness can say, yeah,
15 that's where I got it from, as the Court has already instructed
16 the parties, that does not meet the authentication test. They
17 need someone from that school to be here to authenticate it or
18 to have had an affidavit around it.

19 And I think the Court asked the question before of, okay,
20 it's an injunction hearing. What is the likelihood of being
21 able to get that actually into evidence down the road? And the
22 answer is, I don't see them ever getting any type of prove-up
23 document for this document.

24 **MR. NEWMAN:** Of course, at trial we would have
25 testimony to authenticate the document, but we have had one

1 week, so it's not --

2 **THE COURT:** Wait, wait, wait. This whole one-week
3 stuff, I mean, y'all were taking depositions in May, and people
4 learned of stuff in May. I think his deposition was taken
5 May 3rd of 2024. That's my daughter's birthday.

6 **MR. NEWMAN:** This document just arrived last month.
7 It's a third party --

8 **THE COURT:** Well, wait. There was testimony going on
9 as late as -- there was some evidence going on between the
10 parties as late as June 24th. This motion was filed ten days
11 later. We got the call on July 3rd. So that's why we are
12 here -- that's why we were here last week, that's why we are
13 here now.

14 I mean, so this whole notion of we only had a week,
15 everybody knows what this litigation has been about since 2022,
16 at least, what this litigation has been about, and people have
17 been in place to move the litigation forward. You have had
18 time before the former magistrate judge, you have had time
19 before the current magistrate judge. You are litigating it.
20 You have motions to compel pending. Some have been resolved, I
21 think. You have had objections. So, yes, people knew that
22 there were questions about some of the discovery as it was
23 coming in, as it was being exchanged.

24 Now, I think at the beginning I did talk about these
25 FOIA -- the information that was produced by the colleges in

1 response to the FOIA requests. There is no one here from any
2 of those colleges, correct? No one is here from any of those
3 colleges who submitted a response to a FOIA request. Is that
4 right?

5 **MR. NEWMAN:** That is right, Your Honor.

6 **THE COURT:** Okay.

7 **MR. NEWMAN:** But this document was only received in
8 June, a few weeks ago. It's not like we could take a
9 third-party deposition within weeks after receiving the
10 document. That's for a later date, and that's when it gets
11 authenticated and admitted at trial.

12 **THE COURT:** So what is it -- what is special about
13 this exhibit that this witness ought to be able to testify that
14 would help the Court inform its decision on the current issue?

15 **MR. NEWMAN:** This response to a public records
16 requests is representative of several others where, under PTK's
17 criteria, colleges have provided information that no -- that
18 3.5 does not mean top ten percent. It means top 35 percent,
19 top 40 percent.

20 **THE COURT:** What was your FOIA request, because this
21 was your FOIA request, and people responded to your FOIA
22 request to the information you wanted.

23 **MR. NEWMAN:** The witness will testify that this
24 document was created by Triton -- was sent by Triton College,
25 and the criteria Triton College summarized in the table at the

1 top, "Be currently enrolled at Triton College. Degree-seeking
2 students must have included" --

3 **COURT REPORTER:** Wait. Slow down when you're
4 reading.

5 A. "Be currently enrolled at Triton College part-time or
6 full-time; degree-seeking students must have completed 12
7 college-level credit hours prior to the current semester;
8 certificate-seeking students must have completed 6
9 college-level credit hours prior to the current semester; and
10 have a minimum cumulative GPA of 3.5 grade point average across
11 all your semesters at Triton College."

12 **MR. POLAK:** Your Honor, I have some additional
13 information for you. You will note that there's no Bates
14 number on this. The reason why is we don't believe we have
15 ever even been given this document in document production. If
16 they've had this since June and we are sitting here in mid July
17 and have not received it, that's very concerning.

18 **MR. NEWMAN:** Your Honor, there is a Bates label on
19 it.

20 **MR. POLAK:** Secondly, Mr. Newman, secondly, what Mr.
21 Newman just described for you for the reason why it is he wants
22 this Court to consider it is the very reason that, regardless
23 of authentication, the Court can't consider it. He is telling
24 you that the information in this document that was not created
25 in the ordinary course of business but was created to respond

1 to their FOIA is being offered for the truth of what it says.
2 That is, by definition, hearsay. There is no business record
3 predicate -- there's no exception to the hearsay rule that he
4 could possibly identify that would make this admissible in
5 Court.

6 So it's not only not authenticated. It is a highly
7 questionable fact of whether we've even received it and been
8 produced. And then, thirdly, it is being offered for the truth
9 of the matter, which is hearsay. It cannot be considered by
10 the Court.

11 **THE COURT:** What was the FOIA request itself?
12 Because apparently there was information produced to you in
13 response to the FOIA request. What was the FOIA request, and
14 where is that?

15 **MR. NEWMAN:** You can ask the witness or I can ask the
16 witness.

17 **THE COURT:** No. I mean, there is a written FOIA
18 request that was sent to the school by Honor Society. There
19 was a request. And they attempted to respond to that request
20 based on the information they received. So where is that?
21 Where is that document? And then at least let me know what it
22 is you were requesting and to see if, I guess, the information
23 was responsive to the request. I mean, don't I need to know
24 what was the request?

25 **MR. NEWMAN:** No, because what the request was isn't

1 really relevant to what the response is. The response,
2 regardless of the request, provides the criteria that the
3 college looked at to determine whether a student with a 3.5 GPA
4 is in a certain percentile, and that criteria the college
5 listed at the top. So whether Honor Society requested that or
6 not, that's what the college reports.

7 **THE COURT:** Well, I don't know what the college
8 reported. I see that you have prepared a document here with
9 numbers on it saying that that's what the college did. Is this
10 the document that the college turned in to you in response to
11 the request?

12 **MR. NEWMAN:** Yes.

13 **THE COURT:** This is the document?

14 **MR. NEWMAN:** This is the document the college sent to
15 Mr. Moradian in response to the request.

16 **THE COURT:** Okay. I still need to see the request.

17 **MR. POLAK:** For the record, Your Honor, I stand
18 corrected. There is a Bates number on this document. We just
19 found it.

20 **THE COURT:** I understand. I need to see the request.

21 **MR. NEWMAN:** I don't have the request here today,
22 Your Honor, but I don't think it relates because whether the
23 school is responding to the questions in the request or
24 otherwise providing information that's not in the request, what
25 matters, what is relevant is what the school reports, and there

1 is certain criteria --

2 **THE COURT:** What I hear you saying is this is what
3 the school responded, this is the school's response to our
4 request. The school is not here to testify, though, about,
5 yes, this is what we sent them in response to their request.
6 You want me to say that from the receiver, this is what I
7 received from the school, and everything that's in that
8 document is true and correct. There's a gap there, right?

9 **MR. NEWMAN:** There is, Your Honor, because on a
10 preliminary injunction, there are relaxed evidentiary standards
11 because it is difficult to gather the type of evidence you
12 present at trial.

13 **THE COURT:** I will give it the weight it deserves.
14 That's what I will do. I will give it the weight it deserves.

15 **MR. POLAK:** With respect to the objection, then, Your
16 Honor, to the demonstrative -- I don't think we are to that
17 exhibits, but maybe we are -- is the Court's view that the
18 demonstrative can be used with the witness, but the Court will
19 receive the information subject to the objections that we've
20 made?

21 **THE COURT:** Yes. If it will help -- if it will help
22 him describe his case, yes, subject to the objections, I do --
23 I mean, it's a demonstrative. It will not be admitted. I am
24 giving it the weight, I think -- I think I've been pretty
25 clear, I'm giving it the weight it deserves.

1 **MR. POLAK:** So I do not need to interrupt the
2 testimony, do I have a running objection as to --

3 **THE COURT:** You do. And again, the parties will have
4 an opportunity to argue the law and the issues and keep the
5 Court focused on what the Court needs to be doing.

6 **MR. POLAK:** Thank you, Your Honor.

7 **THE COURT:** All right.

8 **BY MR. NEWMAN:**

9 Q. The document on the screen --

10 **THE COURT:** You may proceed.

11 **MR. NEWMAN:** Thank you.

12 **BY MR. NEWMAN:**

13 Q. The document on the screen, which I will refer to as the
14 Triton exhibit, do you recognize it?

15 A. Yes, I do.

16 Q. What is it?

17 A. It's a FOIA response from Triton College, River Grove,
18 Illinois.

19 Q. How do you know it's a FOIA response from Triton College
20 in Illinois?

21 A. Because I asked for a FOIA request to be placed there, and
22 we received the e-mail back from the records official at Triton
23 College.

24 Q. Did you receive this document?

25 A. David Asari under my command.

1 Q. Is it kept in the regular course of business?

2 A. Yes, it is.

3 Q. The document that you received, what does it indicate?

4 A. Well, in the top portion, it talks about the specific
5 eligibility GPA criteria at Triton College, which we have gone
6 through.

7 Q. Slow down.

8 A. Yes.

9 Q. Go ahead.

10 A. The PTK eligibility is to be enrolled part-time or
11 full-time; to be a degree-seeking student that has completed 12
12 college credit hours prior to the current semester;
13 certificate-seeking students that have completed 6
14 college-level credit hours prior to the current semester; and
15 have a minimum GPA of 3.5 cumulative across all of the
16 semesters at Triton College.

17 Q. Based on that criteria, what is your understanding of what
18 Triton College provided for the percentile the students are in
19 with a 3.5 GPA?

20 A. So the Triton College records official directly produced
21 this to us, and it has the GPA criterion threshold, and for the
22 sake of clarification, the 3.5 plus and 3.0 plus. And we see
23 that the percentage eligible reaches up to 43 percent and as
24 low as 26 percent, but clearly above top ten percent.

25 Q. And did you receive responses to public records requests

1 from other colleges?

2 A. Yes, I have.

3 Q. And were any of those -- did any of those responses
4 indicate that students with a 3.5 GPA were in any less than the
5 top 30 percent?

6 A. Some did show less than top 30 percent.

7 Q. How low?

8 A. All of them, about 40 or 50 that I can recollect, showed,
9 at the minimum, 18 percent, top 18 percent or higher.

10 Q. And what was the maximum?

11 A. 63 percent, I believe.

12 Q. I would like to show the presentation to help aid in your
13 testimony about Dr. Tincher-Ladner's calculations?

14 A. Thank you.

15 Q. Just so the Court understands, did you prepare this?

16 A. I simply screenshotted this from Dr. Tincher-Ladner's
17 presentation.

18 Q. But this presentation that we are showing, six slides or
19 so, you prepared this?

20 A. Yes, I did.

21 Q. And you did this to help illustrate your point so you can
22 better explain?

23 A. Yes.

24 Q. Okay. And so this is the first page. What does this
25 represent?

1 A. So this represents the first page of the cover sheet
2 provided by Dr. Lynn Tincher-Ladner. From the get-go, it shows
3 15 million college students, which Mr. Polak has made clear
4 that there's actually 4.5 million to 4.6.

5 So the first thing that screams is that that number is
6 false, and we have established that through Mr. Polak himself
7 and through the NCES and National Student Clearinghouse.

8 Q. Anything else on this slide that you want to tell the
9 Court that you see about Dr. Tincher-Ladner's testimony?

10 A. Yes. So we see here that PTK is admitting to sending
11 979,000 invites to an audience of 4.5 million, which they are a
12 subset of. It also shows the count of colleges by top ten
13 percent, but that statement, which we will go through, is
14 highly misleading and inaccurate. And further, it's about the
15 number of students who are told that they are in the top ten
16 percent or not, not just simply a number of colleges,
17 especially when 116 of them show zero invitations to those
18 schools.

19 Q. I'm going to turn to the next page on your slide. Can you
20 explain to the Court what this slide represents and how it
21 impacts your understanding of the calculations that
22 Dr. Tincher-Ladner testified about?

23 A. Yes. This is a screenshot directly from the worksheet
24 that we were looking at earlier. And if you look in the
25 equation, it is showing that the column is multiplied by 4.1

1 divided by 6.1, and that happens at every single community
2 college on this sheet, representing an increase in their
3 denominator for no reason, an increase of 62.7 percent.

4 Q. You said 62.7 percent?

5 A. That's right.

6 Q. Is it not 67.2 percent?

7 A. Yes. Sorry. That is correct. I meant 67.2 percent. I'm
8 looking at that.

9 Q. Okay. And then looking at the next slide, would you
10 explain to the Court how this impacts your review of
11 Dr. Tincher-Ladner's testimony?

12 A. Yes. So when you look at invitations, say, on an annual
13 basis, students are invited to join every semester. And when
14 you look at new invitations, by definition, that doesn't
15 include the students that were already identified and already
16 paid their membership dues to be a part of PTK. They wouldn't
17 be invited again.

18 So based on their reported number of 12 percent acceptance
19 rate of their invitation, we are already looking at numerator
20 should be increased by 12 percent, just on this one point. So
21 that was not factored into the number of students that they
22 tell are in the top ten percent.

23 Q. Is it your understanding that the numerator is only new
24 invitees but doesn't include everybody with a 3.5 GPA because
25 some have already joined?

1 A. That is right.

2 Q. So the numerator should be increased by people who have
3 already joined PTK because they too have a 3.5 GPA?

4 **MR. POLAK:** Objection, leading.

5 **THE COURT:** Objection overruled.

6 **BY MR. NEWMAN:**

7 Q. So is it your understanding that the numerator includes
8 only students who are currently invited but not students who
9 had already joined?

10 A. That is correct.

11 Q. And do you understand that students who have already
12 joined also have a 3.5 GPA?

13 A. By definition, that is correct.

14 Q. Do you understand that they are not included in the
15 numerator?

16 A. That is correct.

17 Q. And so how does that impact the results of the analysis?

18 A. Well, first, we would have to remove the imaginary
19 students, the 67.2, or the increase of 67 for every hundred
20 students, but then on top of that, we would have to multiply
21 the numerator by 1.12 or an additional 12 percent to reflect
22 the adjustment required for this point.

23 Q. In other words, the students who had already joined PTK
24 who are not included in the numerator of students with a 3.5
25 GPA or above?

1 A. That is correct.

2 Q. Let's look at the next page of your presentation. Will
3 you explain to the Court what this page represents and how it
4 impacts your analysis of Dr. Tincher-Ladner's calculations?

5 A. Sure. So by my understanding of invitations, if somebody
6 opts out to an invitation, by CAN-SPAM law, there is a
7 requirement that they do not receive a new invitation.

8 Q. What is an opt out?

9 A. An opt out is when somebody says, no, I don't want to
10 receive the invitation.

11 Q. So PTK sends out invitations?

12 A. Yes.

13 Q. And PTK allows people who receive it to agree -- request
14 never to receive another invitation?

15 A. Yes.

16 Q. That's an opt out?

17 A. Yes.

18 Q. So how do opt outs impacts the analysis?

19 A. So opt outs impact the analysis because these are people
20 that would not be included in the new invitations, which
21 Dr. Tincher-Ladner is holding out to be the only people in the
22 top ten percent.

23 From my experience, being in the honor society space, I
24 can tell you that the multiplier would be much higher than
25 12 percent, but for the sake of conservatism, I took the

1 12 percent that were accepted and assumed that 12 percent would
2 also opt out of receiving any more communications.

3 Q. People who don't want to receive PTK's offers are not
4 included in the numerator because they don't receive another
5 offer?

6 A. That's right.

7 Q. So the numerator is deflated?

8 A. Very much so, yes.

9 Q. Let's look at the next slide in your presentation. Will
10 you explain to the Court how this slide informs your testimony
11 and analysis of Dr. Tincher-Ladner's calculations?

12 A. Sure. So as we've discovered, there are many part-time
13 students in community college. And the fact that, you know,
14 like myself, I took two courses which were 6 to 8 units, that
15 wouldn't have been included in PTK's invites because they
16 weren't eligible by PTK standards. However, they did achieve a
17 GPA that would be considered in the top ten percent. And so
18 when you preclude this space on PTK's eligibility, it is
19 precluding people who are in the top ten percent, and that,
20 again, significantly deflates the numerator.

21 Q. So PTK only allows people to join who receive invitations
22 that have 12 credit units?

23 A. That is correct.

24 Q. It is your understanding from your experience that certain
25 students have less than 12 credit units but a 4.0?

1 A. That is right.

2 Q. Do you believe those students are ahead of students who
3 have a lower GPA?

4 A. They have a higher GPA and, therefore, a higher class
5 rank.

6 Q. But they are not included in the numerator?

7 A. That's right.

8 Q. So the numerator is deflated accordingly?

9 A. That's right.

10 Q. The next slide looks at the Triton College data. I think
11 we already discussed that, but if you want to explain to the
12 Court how this impacts the analysis.

13 A. Sure. So, just quickly, I looked at this one university,
14 which we have outside data to confirm, and what we are seeing
15 on their sheet is that they say there's a 7 percent invite rate
16 to that college.

17 Now, the college itself, for that same criteria, that same
18 period below, represented to us that there's a 33 to 43-percent
19 rate. And what that means is that if they are representing
20 7 percent here as below the top ten percent, the university
21 itself is saying that there's a 33 to 43 percent. If you apply
22 that multiplier to the whole sheet, you are going to see a
23 drastically different equation, and we believe this is to be
24 correct.

25 Q. Let's look at the next slide. How does this slide --

1 strike that. Is it your understanding based on
2 Dr. Tincher-Ladner's testimony that some students are invited
3 to join PTK by the chapters themselves?

4 A. Yes, that's right.

5 Q. So they are not invited by PTK?

6 A. That's right.

7 Q. So they wouldn't be included in PTK's invitees?

8 A. That's right.

9 Q. And that number of students deflates the numerator?

10 A. Significantly. That's right.

11 Q. And there's a quote on this page. Will you read the quote
12 and tell us where it comes from.

13 A. Yes. This comes from the spreadsheet itself that Dr. Lynn
14 Tincher-Ladner produced. And it says, "Colleges submitting
15 very low or zero invitations are most likely doing PTK
16 recruitment locally."

17 Q. And how many students are represented by those, low number
18 that you just testified to?

19 A. Well, a lot. We are seeing colleges that say they only
20 had one invitee. There's 116 colleges -- or I believe 130
21 colleges that had between 1 and 100 invitees on the
22 spreadsheet. However, there were schools of 20- to 30,000
23 students commonly. And that's not reflective that it was the
24 top 1 student or the top 100 but rather just the ones that
25 received invitations through this mechanism.

1 Q. And you base that based upon the quote that you see there
2 from the document?

3 A. That is correct.

4 Q. So that numerator is deflated by the number of students
5 that the school invites and PTK doesn't invite directly?

6 A. That is right, and from our survey, we see that a
7 significant number of students do receive local recruitment.

8 Q. Then looking at the next slide, is this the same idea?

9 A. That is right. This slide shows the zero invites that PTK
10 is showing at these schools. What that means is that they are
11 including all of the numbers to the row C, the middle one, and
12 about a hundred more to the denominator, which represents
13 880,000 real students.

14 And then when they include their 67-percent load factor,
15 it increases their denominator, which there is no justification
16 because those students don't exist. It increases the
17 denominator by 1.5 million, 1.48 million students in the
18 denominator. So it's highly misleading.

19 Q. I'm going to skip two slides ahead. This talks about how
20 Dr. Tincher-Ladner's testimony measures colleges. It should be
21 students. Would you explain to the Court what is meant by
22 that?

23 A. Sure. So Dr. Tincher-Ladner is taking a look at the
24 colleges and saying, oh, we have about a thousand chapters, and
25 you see here about a hundred -- about 600 or so don't have a

1 top ten percent issue. But what they are failing to look at is
2 the fact that College of Western Idaho, for example, has about
3 17,000 invitees out of about 20,000 students. So you are
4 looking at an 85-percent acceptance rate at that college, and
5 that skews the results. And then they are taking a school that
6 has one invitee or zero, as we just saw, with 20,000 students
7 and say, oh, well, that balances out, one has and one doesn't
8 have a below ten-percent issue. But when you look at the
9 students --

10 **COURT REPORTER:** Slow down, please.

11 A. -- in this case, 17,000 in one example and, one, we know
12 that 17,000 are then being lied to and misled, and further,
13 that one may be lied to and misled as well because they're the
14 only one that received the invite. We don't know if they were
15 the valedictorian of their school or anywhere near the top ten
16 percent. We just know that their invite was due to the fact
17 they reached their eligibility standards, which at every school
18 we have seen is lower than the top ten percent at your college.

19 Q. And then when you take all of these factors into
20 consideration that you just testified about, what percent of
21 PTK invitees have a 3.5 GPA?

22 A. So this is a conservative method --

23 Q. Strike that. When PTK invites students, what class rank
24 do those students generally have based upon the analysis of
25 Dr. Tincher-Ladner's calculations, do you conclude?

1 A. Well, the class rank that we have seen is about 30 percent
2 on average being in the top ten percent, and what this sheet
3 here shows is that under conservative -- and I studied
4 statistics and econometrics in college, but on a conservative
5 methodology, 89 percent of students are at colleges where the
6 top ten percent of your college claim is literally false. But
7 I also believe, due to my conservative methodology, that that
8 is substantially underestimated, and I could briefly list the
9 factors that would increase that.

10 As we went through, there was the fact that you could
11 previously accept your invitation, and that's 12 percent more
12 at that school. The fact that you could opt out, and more
13 people opt out than accept your invitation, so you are looking
14 at another 12 percent would be included in the numerator. I
15 haven't factored that into the 89 percent.

16 Then you are looking at students who had lower than 12
17 units, like myself, that had a 4.0, and that is a substantial
18 subset of students, as the most common grade in community
19 colleges is now an A.

20 And then when you factor in local recruitment, which takes
21 place independent of this whole process, you then see that
22 their recruitment numerator would be substantially larger.

23 And lastly, to the fact that there is local recruitment, I
24 would like to discuss adverse selection, because that's when
25 they have one or ten students who accept their invitation.

1 They actually are not representative of the top ten percent in
2 their college per se because the odds are, if a 20th or 30th
3 percentile student receives that invitation, they are more
4 likely to accept. And, therefore, even the schools that have a
5 below top ten percent are not necessarily in that.

6 And what I'm getting at is it is a close to 100-percent
7 deception rate of that claim of top ten percent of your
8 college. I have corroborated this through freedom of
9 information and through our consumer surveys. I wish it wasn't
10 true, but it is a truthful allegation and a very sad and dismal
11 reality of what they are doing over there.

12 Q. Did Honor Society send surveys to students asking whether
13 students had been invited by PTK?

14 A. Yes, we have.

15 Q. How many responses did Honor Society receive?

16 A. We received close to 13,000 responses.

17 Q. Of those 13,000 responses, what percent of students
18 indicate that they were invited to join PTK?

19 **MR. POLAK:** Objection. That document is not in
20 evidence. It's not here today. It's not attached to any
21 evidence in the record. It's not attached to Mr. Moradian's
22 declaration. And it's not contained, I don't believe, in any
23 of the exhibits. He is testifying about things that are not in
24 court.

25 **THE COURT:** How is it relevant?

1 **MR. NEWMAN:** He's testifying about business records
2 that show that over 40 percent of students who are asked are
3 invited to join PTK.

4 **THE COURT:** He has testified that he sent out a
5 survey, and he testified that this is a response to the survey,
6 and it just sounds like it is just numbers out of thin air. Do
7 we have a document that reflects the number of surveys he sent
8 out? Do we have documents of the responses that came back?

9 **MR. NEWMAN:** He is testifying about those documents.

10 **THE COURT:** He cannot just testify -- just because he
11 is sitting there under oath does not mean he can say anything,
12 does it?

13 **MR. NEWMAN:** No. But he can testify about records he
14 is familiar with in his business.

15 **THE COURT:** Please show the records to the other
16 side. Do you have the records?

17 **MR. NEWMAN:** They are not in this record.

18 **THE COURT:** Well, you will be able to develop that
19 before the trial, presumably.

20 **MR. NEWMAN:** Right.

21 **THE COURT:** This is not the trial.

22 **MR. NEWMAN:** Can we do Moradian Exhibit 7, please.

23 **BY MR. NEWMAN:**

24 Q. Do you recognize this document?

25 A. Yes, I do.

1 Q. What is it?

2 A. It's a screenshot that I took of Twitter.

3 **MR. POLAK:** Objection, Your Honor. This document
4 is -- you will recall that on Friday, this exhibit, if we will
5 scroll to the first page of this exhibit, this is the exhibit
6 that had the messed up stuff because of the PowerPoint
7 conversion, according to Mr. Newman. And it didn't have the
8 right phone number on the bottom, didn't have the right logo.
9 There are some questions as to authenticity.

10 But what he is showing you right now is the rest of
11 Exhibit 7 that does not have any relationship to the first page
12 of Exhibit 7, and we had also objected to the rest of it, and I
13 believe that the way it was resolved was that you would look at
14 the first page and take it for what it is, understanding the
15 objections and the authenticity issues. But we never got to
16 the rest of the exhibit, and I don't believe they moved for
17 entry of the rest of the exhibit, and we had objected to it,
18 and the only document we used was the first page.

19 So in that context, we have several objections to this,
20 which we stated on the record. These are not authenticated as
21 to time and place. There's nothing on these that would
22 indicate that these are anything other than random screenshots.
23 I think Mr. Moradian just attempted to say that he was the one
24 that did it. Okay. That's not in the record, but fine. These
25 are things -- he just said it. But we don't -- there's no

1 Bates stamp on these. We don't know whether these were
2 produced or not produced. And then it's combined with some
3 others things that are contained from what appears to be an
4 entirely different website at the very end of this.

5 So it's not authenticated, it's hearsay, it is -- yeah,
6 it's not authenticated and it's hearsay.

7 **MR. NEWMAN:** Your Honor, what we submitted as
8 Exhibit 7 contains several unrelated documents, and I'm not
9 asking about all of Exhibit 7. I'm asking about the admitted
10 portions.

11 **THE COURT:** I assume you are about to ask about
12 February 2, 2022.

13 **MR. NEWMAN:** Well, it's not hearsay because --

14 **THE COURT:** Because that's what's on the screen.

15 **MR. NEWMAN:** Yes, Your Honor.

16 **THE COURT:** You are about to ask him what? Ask him
17 the question you want answered about this particular document.

18 **BY MR. NEWMAN:**

19 Q. Do you recognize this?

20 A. Yes, I do.

21 Q. How do you recognize it?

22 A. I screenshotted this from Twitter, now called X.

23 Q. Does it appear to be a post by PTK?

24 A. Yes. It appears to be a direct reply to Shy Girl Grayson.

25 Q. And it says, by PTK, "It means your college told us you

1 are at the top ten percent of students at your college"?

2 **THE COURT:** Do we know what PTK is responding to? It
3 is responding to Shy, whoever that is, Shy Girl.

4 **MR. NEWMAN:** Yes.

5 **THE COURT:** What is it that precipitated PT -- the
6 honor society's -- PTK Honor Society -- what question is the
7 honor society responding to?

8 **BY MR. NEWMAN:**

9 Q. Did you see the question that PTK is responding to?

10 A. I don't remember the content of the question on the top of
11 my head.

12 **MR. POLAK:** I think what he did is he literally just
13 snipped out a bunch of different posts he wanted to talk to the
14 Court about today and threw them on a document.

15 **THE COURT:** I'm just trying to figure out what it is
16 about this document you want him to testify about because
17 there's nothing that authenticates it.

18 **MR. NEWMAN:** Looking at a representation that appears
19 to come from PTK where PTK states, "It means your college told
20 us you're at the top ten percent of students at your college."

21 **THE COURT:** "Your college told us." So how is the
22 Court supposed to deal with that evidence? "Your college told
23 us."

24 **MR. NEWMAN:** We are not offering it for the truth
25 because we don't believe their college did tell them at the top

1 ten percent.

2 **THE COURT:** Why offer it if it's not for the truth?

3 **MR. NEWMAN:** We are offering it to show why, in good
4 faith, Honor Society posted articles about this.

5 **THE COURT:** Objection sustained.

6 **BY MR. NEWMAN:**

7 Q. Before Honor Society posted articles, did Honor Society
8 see a series of posts on the internet by PTK representing that
9 students were in the top ten percent?

10 **MR. POLAK:** Objection, leading, and it's the same
11 issue we just talked about.

12 **THE COURT:** Rephrase your question.

13 **BY MR. NEWMAN:**

14 Q. Before Honor Society posted articles on the internet, did
15 Honor Society see anything that prompted it to post those
16 articles about the top ten percent claim?

17 A. Yes, we saw many, and we've heard Dr. Tincher-Ladner's
18 testimony, and we just learned out about this from March until
19 now. We didn't know about this before. This was never on our
20 radar.

21 Q. Can you summarize for the Court some of what you saw that
22 prompted Honor Society to post those articles?

23 A. Sure. So we are looking at students who are, in the first
24 sentence of their admission, invitation, they are being told
25 they are in the top ten percent.

1 **MR. POLAK:** Objection.

2 A. We students crying about --

3 **THE COURT:** There's an objection. Stop speaking when
4 there is an objection.

5 **MR. POLAK:** Once again, the witness is testifying
6 about documents, in this instance an alleged invitation that he
7 claims contains certain things. That document is not in the
8 record.

9 **MR. NEWMAN:** The witness is testifying about what led
10 Honor Society to post the articles.

11 **MR. POLAK:** But he is still talking about a document
12 that is not in evidence.

13 **THE COURT:** He is talking about a specific document.
14 Be as general as you can.

15 **THE WITNESS:** Sure.

16 **THE COURT:** I mean, you are saying things that they
17 did caused you to go out and do what? Create these, well,
18 pages -- because I've heard you testify that it was, in part,
19 in response to some of Dr. Tincher-Ladner's testimony. Was
20 that the testimony from her deposition months ago or was that
21 from her testimony the other day?

22 **THE WITNESS:** That was from her testimony at the
23 deposition which occurred I believe February 28th, and that's
24 when we first, you know, caught our radar that this could be a
25 large widespread issue that's reaching 130,000 students a year.

1 We had no reason to investigate prior. You know, we had not
2 been keeping track.

3 **THE COURT:** This is stuff I will ask the lawyers, I
4 mean, because we were talking about survey questions back in
5 March, and I'm assuming the Honor Society was aware of PTK's
6 misrepresentations back then. Right?

7 **MR. NEWMAN:** Yes.

8 **THE COURT:** Okay. And as a part of the surveys that
9 you were sending out, it was to solicit information about PTK's
10 representations at that point, right, I assume? Is that right?

11 **MR. NEWMAN:** I assume.

12 **THE COURT:** You assume?

13 **MR. NEWMAN:** Well, I don't know the answer to that
14 question.

15 **THE COURT:** You were not the lawyer then?

16 **MR. NEWMAN:** What's that?

17 **THE COURT:** You were not the lawyer then?

18 **MR. NEWMAN:** I don't know if I understand the
19 question, Your Honor. I'm sorry.

20 **THE COURT:** Okay. Survey questions were going out
21 from Honor Society way back when, at some point in time.

22 **MR. NEWMAN:** In March.

23 **THE COURT:** In March. Were the survey questions sent
24 out in response to the depositions and the information that
25 Honor Society learned through this lawsuit?

1 **MR. NEWMAN:** That's not my understanding.

2 **THE COURT:** Oh, okay. Survey questions are just done
3 all the time as a part of business practices?

4 **MR. NEWMAN:** That's my understanding, yes.

5 **THE COURT:** The websites, web pages, though, were not
6 created until after March 28th, 2024.

7 **MR. NEWMAN:** They were created in June, Your Honor.

8 **THE COURT:** All right. What's your basis for the
9 objection?

10 **MR. POLAK:** I'm trying to remember the question, Your
11 Honor, but I believe that what I -- I believe we were talking
12 about this document -- no, I know what it was now. The
13 question was asked, and the answer that was given included
14 reference to documents that are not in the record. I believe
15 it was specific to this invitation. And so the objection that
16 I had was he's testifying from documents that are not in the
17 record and that we don't even know what it is he is talking
18 about.

19 **MR. NEWMAN:** He's not testifying from documents.
20 He's testifying about what led Honor Society to post articles.

21 **MR. POLAK:** He was quoting specifically, in his
22 answer, documents.

23 **THE COURT:** Let me hear from him what it is that
24 prompted him to do what he did.

25 **BY MR. NEWMAN:**

1 Q. What led Honor Society to post articles about the top ten
2 percent claim?

3 A. It was the awareness that a systematic large-scale fraud
4 was going on and that we are alleging in our lawsuit, and this
5 is the equivalent of an academic stolen valor, Your Honor. We
6 are looking at a society misleading 130,000 students every
7 year, including this coming year. And that's just morally
8 wrong. You know, we know that it is untrue. Not only have we
9 alleged it but we have also proven it is untrue here. So the
10 claim is truthful, and we are simply disseminating it because
11 130,000 students are relying on hearing a counter opinion that
12 is truthful.

13 **THE COURT:** Okay. I've heard it. All right.

14 **BY MR. NEWMAN:**

15 Q. Let's talk about scholarship. What is a transfer
16 scholarships?

17 A. A transfer scholarship is a scholarship that's given to a
18 student upon transfer to a university.

19 Q. And what students have access to transfer scholarships?

20 A. Well, any students who transfers to a four-year university
21 has access to a transfer scholarship.

22 Q. Do Honor Society members have access to transfer
23 scholarships?

24 A. To the extent that they transfer to a four-year
25 university, I believe they do.

1 Q. And do students who aren't a member of Honor Society or
2 PTK or any other honor society have access to transfer
3 scholarships?

4 A. To the extent that there are transfer scholarships, yes, I
5 know they are.

6 Q. Is it your understanding that PTK represents that its
7 average member receives \$2,500 in scholarships?

8 A. Yes, I've seen that time and time again.

9 Q. Do you have a basis to have an understanding as to whether
10 that understanding is true or false?

11 A. Yes.

12 Q. And do you believe it is true or false?

13 A. I believe it is false.

14 Q. Why do you believe it's false?

15 A. It is false because even in the wording, it talks about
16 \$2,500 a year, and the average member gets \$2,500 a year in
17 scholarships from PTK. If we run the math of an average
18 member, which is 130,000 receiving 2,500 a year, and applying
19 two years or more, at a two-year rate, I believe that number
20 would come out to 600 million or more, and that number just
21 simply doesn't add up, even compared to the number that they
22 present, which was originally 39 million, 90 million, and now
23 246 million. So even within their own marketing, they
24 constantly deflect and, you know, are wrong when you compare
25 their own numbers.

1 Q. Is it your understanding that PTK has exclusive
2 scholarships that are substantial for students?

3 A. Well, Dr. Tincher-Ladner testified that, yes to some and
4 no to some. So I believe they may have some, but they don't
5 have them all.

6 Q. How long have you been seeing PTK promote that the average
7 student gets \$2,500 in scholarships?

8 A. I've been seeing it for a couple of years.

9 Q. And have you also seen PTK talk about the total amount of
10 scholarships that are offered?

11 A. Yes, I have.

12 Q. Has that number varied?

13 A. Yes.

14 Q. What have you seen it vary by?

15 A. So I saw it start in the 30-million range just a few years
16 ago. Their member base has been constant roughly throughout
17 this period. And then as I said, we saw it balloon to in the
18 90-million range, the 100-million range, and now the
19 246-million range, despite no change in the 2,500 per year per
20 student and no change in the base of students, no substantial
21 change.

22 It's important to note that they are also not -- PTK says
23 that they are exclusive to PTK members. However, they are not
24 exclusive to PTK members, and Dr. Tincher-Ladner testified to
25 that. So that's misleading.

1 Q. Why did Honor Society post the articles?

2 A. We posted the articles simply to get the word out about
3 what we are seeing.

4 Q. And what in particular are you seeing?

5 A. Well, what we are seeing and the reason why we are suing
6 about this now is that we are seeing a large-scale issue
7 involving the things that we alleged in our lawsuit, which are
8 then spoken about almost to the T within all of the articles.
9 And they are all truthful, and we intend to prove them true.

10 Q. Why do you believe it is important to have these articles
11 on the internet?

12 A. Well, as I stated, 130,000 students actually rely and pay
13 based on these claims. But a million students, which
14 Tincher-Ladner just showed, actually received these statements,
15 and potentially many more per year.

16 Q. And why 5,000 articles? Why not three, for example?

17 A. That's a good question. So I think that when you are
18 looking at something affecting communities, in this case
19 chapters and schools, it's important to get the message out,
20 you know, to the people searching. You know, if they are
21 searching the internet for information, we are just seeking out
22 a counterbalance. We are not seeking to say that this is the
23 end-all be-all, because PTK certainly tells their story. They
24 tell it in the invitations, they tell it to the chapters,
25 whether true or untrue. We just seek to tell a narrative of

1 what the allegations are and why the public needs to know, that
2 they are affected by it and they are harmed by it.

3 Q. Are you aware of any other websites that have republished
4 any of the Honor Society articles at issue today?

5 A. Not at all.

6 Q. Are you aware of any websites that have discussed the
7 articles that Honor Society has posted that are at issue today?

8 A. Not at all.

9 Q. Are you aware of any press or media that have covered the
10 subject matter of those articles?

11 A. No, not at all.

12 Q. Do any of those articles call for any type of commercial
13 transaction?

14 A. No, not at all.

15 Q. And what do you mean when you testify that the articles do
16 not call for a commercial transaction?

17 A. So the articles are put up on the internet, and we -- they
18 are not looking for people to join Honor Society. We are not
19 asking people to consider our society. We are standing to lose
20 by posting these articles because it is directly our industry,
21 and we are calling out a bad act that, frankly, hurts us. It
22 hurts us competitively, but it also -- the consumer who reads
23 these messages are not just magically drawn to us. It actually
24 ruins their trust, and I wish, I sincerely wish this wasn't the
25 case. I don't want to be here telling people that the top ten

1 percent isn't true, but it is not. It is factually incorrect,
2 and that's all I seek to let students know.

3 Q. Do any of the articles that are at issue today have links
4 to a sign-up page for Honor Society?

5 A. No.

6 Q. Do any have links to any other page within Honor Society
7 that calls for a member to join?

8 A. No.

9 Q. Has Honor Society advertised these articles at all?

10 A. Not at all.

11 Q. When internet users arrive at a sign-up page for Honor
12 Society, are there links to these articles on that sign-up
13 page?

14 A. No, not at all.

15 Q. So is there any connection between signing up for Honor
16 Society and these articles anywhere on the websites?

17 A. No, not at all.

18 Q. When did Honor Society create these articles?

19 A. These articles were by and large created June 18th to
20 24th.

21 Q. And did you edit them after they were first created?

22 A. Within that time frame, yes.

23 Q. When did you edit them?

24 A. I believe they were edited during the weekend, which I
25 believe was around the 22nd or 23rd.

1 Q. And that was before the hearing with Judge Myers where
2 PTK's counsel told us about these articles?

3 A. Yes, that is correct.

4 Q. Do you remember seeing, in Dr. Tincher-Ladner's
5 declaration, reference to an article that Honor Society posted
6 that she alleged spoke in the voice of the college?

7 A. Yes, I do.

8 Q. And were those articles that she believed spoke in the
9 voice of the college removed by June 25 from the internet?

10 A. Yes, well before that.

11 Q. And that was before the hearing with Judge Myers?

12 A. That is correct.

13 Q. Was that at least a week before the motion here was filed?

14 A. That is correct.

15 Q. And why did you remove those articles?

16 A. I removed portions of the article precisely because I was
17 afraid of being silenced. You know, I'm afraid of speaking.
18 You know, what's happening is a chilling effect. We are not
19 allowed to talk about the wrongdoings, significant wrongdoing
20 that we found to be true. And, you know, if I'm afraid to
21 speak up, many are afraid to speak up. We have X employees
22 that are afraid to speak up. We have members and chapter
23 advisors that are afraid to speak up. And if not me, who? And
24 if not now, when?

25 Q. In connection with any of the articles at any time before

1 or after they were edited, did Honor Society ever use photoshop
2 to photoshop an image of Dr. Tincher-Ladner?

3 A. Never.

4 Q. We saw images on Friday that said "Red Alert." Do you
5 remember those images?

6 A. Yes, I do.

7 Q. Were those removed from the internet before June 25?

8 A. The images that looked like a movie scene were removed,
9 and they were replaced with generic messaging, such as a red
10 alert, a siren, or just generic symbols.

11 Q. We saw an image of a woman holding money. Was that image
12 removed before June 25?

13 A. Yes, it was. That one may have been removed between
14 June 25 -- but I know before July 3rd.

15 Q. Is it your belief that PTK has misappropriated funds from
16 students?

17 A. Based on what I've been seeing from Freedom of Information
18 requests, from the students themselves, from the 990s, the
19 public filings of the non-profit, I certainly do.

20 Q. What's the basis for that understanding?

21 A. Well, the basis is that their first and most impactful
22 statement of their organization to a consumer is a large-scale
23 lie, that we have found examples, about 40 from community
24 colleges, which I believe would be happy to testify to that.
25 They are a compliance officer who are neutral, and they just

1 report the facts, and what they did is produce the facts and
2 gave them to us as a right to know.

3 Q. Have you searched for press about this lawsuit?

4 A. Yes.

5 Q. What have you seen in response to your searches?

6 A. The only press that I have seen stem from the press
7 release two years ago, which, you know, was featured in
8 Bloomberg and other legal outlets. There has been no press, to
9 my knowledge, since.

10 Q. When you refer to the press release, what press release
11 are you referring to?

12 A. I'm referring to the press release that PTK put out on the
13 day of this lawsuit on April, in April 2022, which we didn't
14 respond to until recently.

15 Q. Does Honor Society have a website up, PTKlawsuit.com?

16 A. Yes, we do.

17 Q. What's the purpose of that website?

18 A. The purpose is to inform the public of the lawsuit, the
19 allegations, and just general knowledge about really our
20 perspective of the case, because we've been silent for two and
21 a half years, and it has been a one-sided system here, and we
22 are just seeking to tell our story. And that's something that
23 apparently is not okay. They are trying to enforce a one-sided
24 justice system here.

25 Q. Did you post any of the articles to cause harm to PTK?

1 A. No, definitely not.

2 Q. And do you understand why there's a concern that that
3 might have been the intent?

4 A. I can understand that, yes.

5 Q. What's your understanding about that concern?

6 A. I can understand that it could look like it's -- an
7 article is coming out to potentially hurt an organization, but
8 when you look at the actual facts surrounding it, you are
9 looking at a person, me, who spent years waiting and studying,
10 doing freedom of information, surveying, filing a lawsuit and
11 alleging it, and then discussing to the very most the truthful
12 allegations, to the best of our knowledge, to impart it onto an
13 audience that otherwise would not know, they have no way of
14 knowing this otherwise, and it is impactful to their
15 decision-making.

16 Q. So, if not to harm PTK, why did Honor Society publish
17 these articles?

18 A. Well, as I stated, we have just found out. This is, in
19 many ways, breaking news. You know, we didn't know about this
20 to this extent in March. The March events, you know, to a
21 large part, were done for education purposes. How can you
22 understand something if you don't research it? And research
23 involves freedom of information. It involves going to sources
24 that would have information and asking them respectfully, could
25 you provide us with this information. It involves doing

1 surveys and inquiries into what is going on.

2 So those were all good faith efforts to learn about what's
3 going on. As we learned what is going on, a dark pattern
4 emerged, and that's our allegation. And unfortunately, it is
5 true. And, you know, we seek to prove that in the court, and
6 we seek to let the audience know what we found to be true thus
7 far, from our perspective.

8 Q. Can you summarize in one sentence why you posted those
9 articles?

10 A. To inform the audience that are impacted of the potential
11 misstatements and deception that is occurring without any
12 counterweight knowledge to what is happening.

13 **MR. NEWMAN:** Based on the Court's desire to move this
14 along, I'm going to skip a lot of questions I would have
15 otherwise asked. But to the extent the Court allows Recross, I
16 would ask for Redirect because, again, I would otherwise be
17 able to direct in PTK's case and then be able to ask questions
18 again in my own case. Here, I only had one chance. So to the
19 extent there are going to be more questions, I would like to
20 follow up, if necessary. I might not elect to, but if
21 necessary.

22 **THE COURT:** I don't want to be faulted for you not
23 asking the questions you need to ask. They are having to carry
24 the burden of, you know, you not having enough time to get the
25 documents and proof in order because it was only filed a few

1 days ago and all of that. So I don't -- I want to give you
2 every opportunity to ask whatever questions you think you need
3 to ask.

4 **MR. NEWMAN:** Thank you, Your Honor. I think I'm
5 going to allow the hearing to proceed so that we can move to
6 argument, but to the extent that there are more questions of
7 this witness, I may ask for Redirect.

8 **THE COURT:** Okay. All right. We are going to take a
9 15-minute recess for the court reporter. And then if there are
10 just a few questions, I don't know -- I do have a question. I
11 do have a question. Well, I will wait for my question. We are
12 going to take a 15-minute recess.

13 **(RECESS TAKEN AT 3:00 P.M. UNTIL 3:28 P.M.)**

14 **THE COURT:** Any Redirect or Cross, or whatever we are
15 calling it, of Mr. Moradian?

16 **MR. POLAK:** We have no further questions of Mr.
17 Moradian, but we will have a rebuttal witness.

18 **THE COURT:** Who is the rebuttal witness?

19 **MR. WALLACE:** Dr. Tincher-Ladner, to unfortunately
20 contest the things we heard on the stand that were not a part
21 of his declaration, or is otherwise a part of the record, other
22 than his testimony. I don't expect it to go long.

23 **THE COURT:** Okay. You may call her. Do you have an
24 objection?

25 **MR. NEWMAN:** I do. I mean, it's a preliminary

1 injunction hearing.

2 **THE COURT:** Make sure you are speaking into the
3 microphone for the benefit of the court reporter.

4 **MR. NEWMAN:** Your Honor, we have heard hours and
5 hours of testimony from PTK. I understand they have the burden
6 of persuasion, but this is a preliminary injunction hearing.

7 I think the Court wants to get to arguments, and when
8 PTK's counsel gets going, it goes for a while. I think that
9 the Court should stand on the testimony that is before the
10 record and the declaration and the document, and PTK's counsel
11 has already volunteered to move on to argument and said that
12 the evidentiary hearing is unnecessary.

13 **MR. POLAK:** That was before I --

14 **THE COURT:** You may call your witness.

15 **MR. POLAK:** Thank you, Your Honor.

16 **THE COURT:** You pay proceed. You are still under
17 oath, Dr. Ladner.

18 **MR. POLAK:** I will need the Elmo turned on, please.

19 **DR. LYNN TINCHER-LADNER,**
20 **having been previously duly sworn, testified as follows:**

21 **DIRECT EXAMINATION**

22 **BY MR. POLAK:**

23 Q. Dr. Tinchler-Ladner, you heard Mr. Moradian inform the
24 Court that I think there were some 1400 some odd community
25 colleges in the United States. Do you have a different

1 understanding than that?

2 A. Yes, there are not 1400 community colleges. There is just
3 a little over a thousand.

4 Q. You have been in the community college business your whole
5 life, haven't you?

6 A. Yes.

7 Q. How many years is that professionally?

8 A. This will be my 34th year.

9 Q. Let's go through this document here. The first number
10 that Mr. Moradian talked about was this 15 million number.
11 That is your number. You put it on the page. How was that
12 calculated?

13 A. That is -- a lot of the numbers I've heard today are just
14 fall numbers. That is the sum of every student that's on a
15 community college campus at all the campuses.

16 Q. For an entire year?

17 A. That PTK serves.

18 Q. For an entire year?

19 A. For an entire year. So it's fall, spring, and it's an
20 unduplicated head count. So no one is counted twice. They are
21 all counted one time.

22 Q. Did you just make that number up?

23 A. No.

24 Q. Where did you get it from?

25 A. Well I got it from two sources: One, the credit, you

1 know, program students, most of what I've heard about today, I
2 would have received that from the IPEDS database where the
3 colleges report to the federal government. They do report
4 their fall numbers, which I've heard a lot today, but they also
5 are required to produce an annual unduplicated enrollment
6 number, and they produced that as well.

7 So you have two different data points that you can access
8 for each -- every single college that gets PELL grants.

9 **COURT REPORTER:** Could you spell IPEDS?

10 **THE WITNESS:** I-P-E-D-S. It's the Integrated Post
11 Secondary Education -- let me see. Anyway, it's just called
12 IPEDS, but it would be under the NCES, the national -- the
13 website for all of the statistics for higher ed.

14 **BY MR. POLAK:**

15 Q. This number of 4.6 million has been thrown about here in
16 the courtroom. Let's just assume, for the sake of argument,
17 that 4.6 million is the number. Is that 4.6 million number the
18 entire year, so that means it's the total number of students
19 that happen to show up on a community college campus for an
20 entire year, or is that a snapshot for one semester?

21 A. I don't know where that number comes from, because if you
22 look at AACCC, the American Association of Community Colleges,
23 they publish a very high level fast facts document every year,
24 and this year alone, this year's document has, in the fall
25 alone, 6.1 million credit students and another 4.2 or 1 --

1 anyway, there is a little over 10 million students just in the
2 fall, according to the American Association of Community
3 Colleges. And they have an entire department of researchers
4 I'm all familiar with that that I highly respect where their
5 numbers come from.

6 Q. So community college, students are generally in school for
7 one to two years, right?

8 A. Correct.

9 Q. So you talked about the fall. Let's talk about the spring
10 semester. There might be another -- I mean, there might be
11 10 million students enrolled in school that semester, right?

12 A. In the spring, it's a little smaller because, you know --

13 **MR. NEWMAN:** I'm going to object, lack of foundation.

14 **THE COURT:** Objection overruled.

15 A. You know, I've never seen the spring completely isolated.
16 All I've seen is the fall and then the whole year, so I don't
17 really want to --

18 **BY MR. POLAK:**

19 Q. Right. But I guess the point is, though, Lynn -- I'm
20 sorry, Dr. Tincher-Ladner, is that you can look at the fall
21 isolated and compare that against the number of invitations
22 that you offer, right?

23 A. Oh, yeah.

24 Q. And you feel very confident that it is 10 percent or less
25 on average, right?

1 A. Yes. I mean, there are a few colleges. It looks like we
2 are a little over ten percent, but we are far under ten percent
3 of the students on campus.

4 Q. By a little over, you mean instead it is 11 percent or
5 12 percent?

6 A. Right.

7 Q. And then with respect to the next semester, you start all
8 over again. And some of those students might have been there
9 the semester before or they might be brand new, but at the end
10 of the day, you go issue another roughly ten percent of that
11 population invitations, right?

12 A. Yeah, and if you are invited to join PTK, you are not
13 invited at all usually the first semester. You have to
14 complete at least 12 hours. It is generally 12 hours. If you
15 are in a one-year program, that reduces to six hours. But we
16 can't assess your grade point average at all until you have
17 been in college at least one semester.

18 So our students are in college for almost -- for a year,
19 because they have to reenroll the next semester to even be
20 invited. So just during a fall/spring, there are different
21 studies out there, but I've seen the dropout rate anywhere from
22 30 to 50 percent of the students drop out during that time.

23 Q. So let's look at the FOIA request document here
24 separately, and this is one that Mr. Moradian also testified
25 from. Here, supposedly on the document, there is a report here

1 of who is in the group that they reported out statistics for
2 down here. One is, they have to be currently enrolled, either
3 part-time or full-time. Are there other types of students
4 other than full-time or part-time?

5 A. Yeah, there are lots of different types of students. I
6 mean, Hinds Community College right here in Mississippi is not
7 only the largest community college in Mississippi, they are
8 also the largest high school because they produce more GEDs
9 than probably any of the high schools around here.

10 So you look at students that are going to Hinds, and they
11 are there for a lot of different reasons. A lot of students
12 are unprepared and they cannot even take a college-level
13 course.

14 **THE COURT:** Would they be included in a part-time
15 number or a full-time number, though?

16 **THE WITNESS:** They might be included in a part-time
17 number, but if they are in a noncredit in status, because a lot
18 of times they don't want to put them in credit classes because
19 then their PELL grant starts, and they want to do their
20 developmental education with those students in a noncredit
21 status in most schools.

22 **BY MR. POLAK:**

23 Q. I think the point, though, Dr. Tincher-Ladner, is looking
24 at this document, you can't tell whether or not Triton included
25 those other students or not, can you?

1 A. I really can't. I would have to, you know, look at this,
2 but again, this is done by semester by semester. So PTK
3 members have a 91-percent success rate. So they are there
4 every semester, and you have all of these other students coming
5 and going this whole time. So we back up and we do our
6 calculations on an annual basis.

7 **THE COURT:** I guess my next question, and I'm sorry
8 to cut across you, is every community college the same?

9 **THE WITNESS:** Pretty much.

10 **THE COURT:** Do all the community colleges offer the
11 GED courses and offer the stuff that Hinds might do that might
12 increase their numbers or decrease their numbers?

13 **THE WITNESS:** Yeah, I would say that according to the
14 AACC, out of all the community college students, 60 percent of
15 them are in a credit, and 40 percent are in a noncredit. And
16 that number really hasn't changed much in the last 5 or 6
17 years.

18 **THE COURT:** Okay.

19 **THE WITNESS:** You know, there's a lot going on in the
20 mission of a community college, and those students are just not
21 eligible for PTK, and we don't consider noncredit students as a
22 top because they don't have any criteria for us to even look
23 at. But they are there, and our advertisements don't say top
24 ten percent of a certain kind of students. They just say top
25 ten percent of students on campus. And so these students are

1 on campus, and they are doing things.

2 And a lot of times the work that they do may be -- I think
3 I'm overanswering your question, but there's a lot that
4 colleges do to get their noncredit work transferred to credit.
5 So there's entire offices that do a noncredit to credit -- to
6 get those students on the other side. But anyway, I think I
7 overanswered it.

8 **BY MR. POLAK:**

9 Q. I appreciate it, Dr. Tincher-Ladner. Let's look at the
10 demonstrative aid. I want to go through very quickly these
11 slides that they used with Mr. Moradian and just get your
12 response to them.

13 Here Mr. Moradian claimed that it was a false narrative
14 about the top ten percent because of his conclusion that you
15 had unreasonably inflated the denominator by 67.2 percent, for
16 the reasons that he described. Do you have a criticism of that
17 analysis?

18 A. I do, because, you know, a university has a mission to do
19 credit work and graduate level work, but community colleges
20 have a dual mission to do undergraduate credit and work force
21 development, and also community work, which is all their
22 noncredit. And, in fact, here in Mississippi, I would say a
23 lot of these colleges might have even more noncredit students
24 than credit students. I mean, I've heard that, but I don't
25 know exactly what they have. But according to the AACC, if

1 40 percent of the colleges on campus are noncredit, what I have
2 done in this column here to estimate the unduplicated noncredit
3 is to take their statement about how many noncredit students we
4 have and push it across these institutions. And essentially,
5 that number -- these are all in, like, that 60 to 40
6 relationship that they claim is true across community colleges.

7 And the reason the AACC would know that is they have their
8 own database call the VFA, the Voluntary Framework of
9 Accountability, and community colleges upload their head counts
10 to that system, and that's how they are able to tell what
11 noncredit -- what the noncredit work is, because you won't find
12 it published in the public websites under the NCES. But I have
13 done economic impact studies for a lot of different colleges,
14 and we always include the noncredit work because that's what
15 the taxpayers are paying for. They are paying for the GED.
16 They are paying for all of this stuff.

17 So those students are there, and when we talk about how
18 many students we serve, we add them all together when we are
19 presenting to the public the work of that institution.

20 Q. Dr. Tincher-Ladner, with respect to this false narrative
21 number one, is it your view that Mr. Moradian's testimony
22 suffers from just a lack of understanding of the unique aspects
23 of the community college market?

24 A. Yeah, I think that, you know, he mentioned some honor
25 societies for adult ed. I would have to investigate those

1 honor societies, but I think they are for the teachers of adult
2 ed that he mentioned, not the students. But adult education,
3 work force development, remediation, is such a huge part of
4 what colleges do, and he is leaving out that part of their
5 mission.

6 Q. False narrative number two he claims is that your
7 numerator was improperly inflated -- or, I'm sorry, deflated by
8 12 percent because you were including, I believe, people that
9 had already joined. So do you have a response to that?

10 A. I do. Community colleges, when they join Phi Theta Kappa,
11 about 45 percent of our members are joining right there at
12 graduation to get the scholarship, the transfer scholarships,
13 and they are joining so they can wear the regalia. So when I'm
14 doing these numbers on an annual basis, half the chapter is
15 gone the next year.

16 Now, there is -- there are members that are still there,
17 but when I look at the numbers and you look at chapter sizes, I
18 wish they were bigger than they are, it was immaterial to
19 account for that percentage of students, because a lot of them
20 will also graduate the next day.

21 I mean, our membership completely flips over within two
22 years, all of it, but I just wanted the analysis to have those
23 two columns to keep it easy to understand, but it's immaterial.
24 If I were to account for those students, it would still be way
25 under ten percent on all of those colleges.

1 Q. He also claims in this alleged false narrative three that
2 your number was incorrect by around 12 -- your numerator was
3 incorrect by around 12 percent because you should not have
4 included opt-outs from previous invitation rounds. Is that a
5 true -- sorry. Is that a valid observation on his part?

6 A. I don't know how Mr. Moradian would know anything about
7 how I handled opt-outs in my analysis, because when I'm
8 counting the invitations, I'm not counting what's going on over
9 here in Mailchimp. So if a student has opted out, Mailchimp
10 handles that.

11 Q. Opted out to you?

12 A. Yes, opted out from receiving communications from
13 Mailchimp. When I do my analysis, I pull the students off of
14 the upload areas where colleges go into our system and they
15 upload the potential members for that year. I'm doing my
16 analysis based on the uploads of those students and not
17 based -- this is not even part of the analysis at all.

18 Q. He also claims false narrative number four, and he claims
19 that you did not factor in top ten percent of GPA of
20 individuals taking 1 to 11 units.

21 A. Well, in this instance, they are not eligible for PTK
22 until they hit 12 hours. Fortunately, we are seeing a lot of
23 high school -- I mean, dual enrollment and dual credit is
24 really in expansion, and so many high school students are
25 getting to the 12 percent threshold where they will eventually

1 get invited. But, you know, if you come to community college
2 and take one class, or whatever, and you have a good grade, we
3 don't invite you, and we don't consider you in that calculation
4 for the numerator because you are not receiving anything from
5 us at that point that even says you are in the top any percent.

6 Now, we do count them in the denominator because they are
7 a student at the school. And the way we have the methodology
8 set up is we just look at the number of invitations versus the
9 number of students. That's the way we have always done it. We
10 have been saying we are the top ten percent for I know 20 years
11 at least that I've been associated with knowing more about
12 this. And after this lawsuit, I went back, and we have been
13 saying the top ten percent -- for as long as I have anything
14 that's written about PTK, that's what it says.

15 Q. False narrative number five on his demonstrative claims
16 that you did not count local recruitment. Therefore, you
17 affected the numbers. Do you have an observation about that?

18 A. Well, you know, the aggregate numbers that we showed in my
19 statement shows at 4.5 percent. So if a college is doing their
20 own invitations, the reason they are doing that is because they
21 have policies that they cannot give us the data. They will not
22 give us the data because they have a FERPA situation where they
23 have to do the invitations on their own. Now, whether or not
24 those invitations say you are in the top ten percent, I would
25 have no clue what those invitations have in them. But if they

1 are on my report as a zero or low, it means they are doing
2 their recruitment. And if I could account for them, there
3 would be still absolutely no way we would push over the
4 ten-percent mark either in aggregate or at those institutions.

5 Q. There were some zeroes on your spreadsheet which he called
6 zero invite colleges. Did that really affect your calculation
7 to cause it to be incorrect?

8 A. No. I mean, like I said, our aggregate showed us at like
9 four and a half or five and a half percent, six percent. So
10 even if we were able to include these colleges, which we can't,
11 because I'm not going to send a FOIA request and ask colleges
12 what they are doing. You know, Hinds Community College does
13 not work for me. I work for Hinds. So I do the best
14 methodology that we can possibly do with using public data
15 sources, and that's the way we do it.

16 Q. But even if we are looking at it -- if we take a step
17 back, and we go back to the question I was asking you at the
18 very beginning, if you take a step back and you look at the
19 total number of students that are enrolled in community
20 college, and you look at the percentage of those students that
21 you are sending invitations to, is it at or below ten percent?

22 A. That's where we got the ten percent. Our invitations have
23 always been about ten percent of the enrollments, and that's
24 just what we have always looked at. And I studied this when I
25 came to PTK in 2012, as their institutional researcher, I

1 verified it, and in my deposition to Honor Society, I explained
2 how we do the calculation, and that's all I can tell you. This
3 is our methodology, and it's solid.

4 **MR. POLAK:** Thank you, Dr. Tincher-Ladner.

5 **CROSS-EXAMINATION**

6 **BY MR. NEWMAN:**

7 Q. Did you testify that you include students in your
8 denominator that aren't enrolled full-time or part-time?

9 A. We include full-time and part-time students, and we invite
10 part-time students too.

11 Q. Did you testify that you include students who aren't
12 enrolled full-time or part-time?

13 A. We include students that are noncredit students. Colleges
14 have different classifications for those types of students, so
15 we are just calling them noncredit more generically at a
16 research level when we study these students, but usually -- you
17 know, they actually have different -- they've got more than
18 half-time, they have half-time. There are so many different
19 calculations. I know the public knows full-time and part-time,
20 but it is actually way more complex than that. But a noncredit
21 student is just a student on campus.

22 Q. You testified the denominator includes every student on
23 campus?

24 A. Yes.

25 Q. But "every student on campus" includes nondegree-seeking

1 students who don't receive any GPA at all?

2 A. That is correct.

3 Q. And schools have a substantial number of students who do
4 not take classes for credit and don't receive a GPA, correct?

5 A. Yes, because they are usually in remediation and they are
6 not able to take credit classes yet.

7 Q. So students who don't receive a GPA can't be ranked
8 against students who do receive a GPA because there's nothing
9 to rank them against, correct?

10 A. Well, they are still a student on campus.

11 Q. Exactly. And students who do not take classes for credit
12 can't be ranked higher or lower than students who do take
13 college classes for credit, because students who don't take
14 classes for credit don't receive any grades at all?

15 A. We don't rank. We look at the number of invitations and
16 the number of students and we divide, and that's how we get the
17 percentages.

18 Q. So students who don't receive any grades and thus can't be
19 compared against students who do receive grades artificially
20 inflate the denominator, because there's no way to determine
21 whether they have a higher or lower GPA than students taking
22 classes for credit, correct?

23 A. I'm not artificially inflating anything. You have a
24 problem with our advertisement. We say you are in the top ten
25 percent of students on campus, and there's a lot of students on

1 campus. A student taking developmental ed classes is not a top
2 student.

3 Q. Doesn't PTK also represent you are in the top ten percent
4 of your class?

5 **COURT REPORTER:** Wait. Slow down. Can you repeat
6 your question?

7 A. I've never seen top ten percent of your class.

8 **THE COURT:** Hold on. I think the court reporter
9 wants you to repeat your last question.

10 **MR. NEWMAN:** I will strike the question.

11 **BY MR. NEWMAN:**

12 Q. In your analysis, you increase the number of students
13 enrolled by 67 percent to account for noncredit students,
14 correct?

15 A. I did a 60/40 split, which is what the American
16 Association of Community Colleges says is going on.

17 Q. And that is 67 percent?

18 A. Forty -- yeah. More -- it's an increase of two-thirds, or
19 four divided by six, or whatever the number was for that year.
20 It varied. Every one of their reports that I gave you had the
21 number that was right for that year.

22 Q. And in the report we looked at, you used 67 percent for
23 every college in the country, even though that number can vary
24 dramatically from school to school, correct?

25 A. It can be a lot higher.

1 Q. And it could be a lot lower, correct?

2 A. I don't know.

3 Q. Correct?

4 A. I don't know.

5 Q. You know it could be higher, but you don't know if it
6 could be lower?

7 A. I don't know if it's material.

8 Q. You testified it could be higher?

9 A. It could be a little higher or a little lower, but it is
10 40 to 60 ratio of noncredit to credit work in the country.

11 Q. It could be a lot lower, couldn't it, if you went school
12 by school?

13 A. I don't know. I don't do FOIA requests and harass
14 colleges for data.

15 Q. PTK doesn't have chapters at every school, does it?

16 A. We have chapters at -- I would probably say about
17 98 percent of them, 97 percent of them, something like that. I
18 would have to look at that.

19 Q. The numerator in your calculation does not include
20 students who have already joined PTK, does it?

21 A. Well, they have graduated out. Because I'm doing a yearly
22 analysis, I'm counting everybody one time, and most of those
23 students graduate out. I'm probably not accounting for a
24 handful of students at each chapter, not anything that would
25 materially change and cause -- it would be insignificant. The

1 chapter sizes are very small compared to the numbers we are
2 talking about on these sheets.

3 Q. PTK sends invites after one semester if a student has
4 accrued 12 units, correct?

5 A. No.

6 Q. When does PTK send an invitation?

7 A. I don't know when a student gets one because they have to
8 have 12 hours. If they are part-time and they are only taking
9 3 hours, they've been there two years before they get an
10 invitation --

11 Q. If a student goes full-time and accrues 15 units its first
12 semester, that student will receive an invitation from PTK,
13 assuming it has a 3.5 GPA and meets other requirements,
14 correct?

15 A. Correct.

16 Q. And then the following semester, that same student will
17 not receive another invitation because that student has already
18 joined PTK, correct?

19 A. Not very many of them, but yeah, they will receive another
20 invitation if they haven't joined, if they are maintaining the
21 criteria. If they drop below it, they won't be reinvited.

22 Q. And the students who have already joined PTK likely have a
23 3.5 GPA but are not included in the numerator, correct?

24 A. But within a year's time, a significant number of those
25 students graduate out off the roles. And I did look at that to

1 include it, but it was immaterial.

2 So I tried to make my analysis as easy to understand as
3 possible, but I can go back and add them in, and I promise you
4 we would be under ten percent, every one of those.

5 Q. You looked at it?

6 A. I looked at doing it, and it was immaterial.

7 Q. And you realized that there are students who receive
8 invites after one semester, and they are not included in the
9 numerator the second semester, correct?

10 A. I don't think I'm following you at this point about what
11 you are talking about. I'm saying that if you are already a
12 member, you wouldn't be reinvited, correct, but sometimes --

13 Q. And not included in the numerator, then?

14 A. Here's the thing --

15 **THE COURT:** Wait. Hold on.

16 A. -- sometimes you are.

17 **THE COURT:** Hold on. No talking at the same time.
18 That's all. It makes it awfully difficult for the court
19 reporter. That's all.

20 A. Sometimes colleges will upload the student again because
21 they haven't properly figured out they are a member on their
22 end and marked it in their database, and then before they would
23 receive an invitation, we would take them out of the data set,
24 but this analysis leaves them in. So I conjecture there are
25 probably just as many students in that situation that are

1 sitting in the situation you are saying.

2 I'm just telling you, if you want me to redo the analysis
3 and put them in there, I promise you it will still stay under
4 ten percent for every single one of those colleges.

5 **BY MR. NEWMAN:**

6 Q. So you agree the numerator excludes students who have a
7 3.5 GPA and who are enrolled at the school full-time?

8 A. I am looking at a whole year. So I will concede that
9 there's probably a handful of students that are not in there
10 that are in their chapter, but it is insignificant. They have
11 graduated.

12 Q. When sending an invitation, PTK includes a link for
13 students to opt out and never receive another invitation from
14 PTK? Is that correct?

15 A. Yes.

16 Q. And many students click on that link?

17 A. I don't know how many students click on that link. But
18 that is all in Mailchimp.

19 Q. But PTK doesn't send another invitation if a student has
20 requested not to receive an invitation, correct?

21 A. I don't know. You know, it just depends on -- we send it.
22 If Mailchimp says it's not going to arrive at its destination,
23 then it won't, but I counted them in my study.

24 Q. The numerator doesn't include students with 4.0 GPAs that
25 haven't yet achieved 12 credit units, correct?

1 A. We don't look at them until they achieve the criteria that
2 the college set. Sometimes it is 15 hours. It depends. Like,
3 I've got colleges that won't let them in PTK unless they have
4 like a 3.75 or a 3.9. You know, it's -- we've talked about
5 this at length at my depositions.

6 Q. But students who have a high GPA, like a 4.0, are higher
7 in the class than students with a lower GPA, such as a 3.5.
8 You would agree with that, right?

9 A. I think -- we don't look at it in terms of class ranks.
10 We don't. No one does. I mean, at community colleges, like,
11 we don't know what you are talking about. We look at the
12 percent of invitations. I mean, it's just the way, the only
13 way we can do the math accurately and respectfully without
14 having all of this information.

15 Q. You do agree, don't you, that a student with a 4.0 is
16 higher in the class than a student with a 3.5?

17 A. No. Usually it has to do with the number of hours you've
18 been there too when you start, quote, ranking people. If you
19 do rank students at all, you do it at graduation and everybody
20 has 60 hours. And, you know, if you want to talk about
21 graduation, we have a 91-percent success rate, and community
22 colleges have way less than that. Like, literally, it is sad,
23 but 25 to 35 percent of community college students graduate
24 within three years, period.

25 Q. But the invitations don't go out at the time of

1 graduation, do they?

2 A. They will continue to go out until you join if you are
3 still eligible.

4 Q. Invitations go out sometimes after the first semester of
5 taking credits and receiving, for example, 15 credit units,
6 correct?

7 A. Yes, and we count them one time. Your study is counting
8 them over and over and over.

9 Q. And when you count them one time and a student might have
10 a 3.5 GPA, that student, you would agree, has a lower GPA than
11 a student with a 4.0 GPA, correct?

12 A. If a student walks into a community college and takes one
13 really easy class and gets an A, we don't consider them a top
14 student.

15 Q. So you don't consider students with a 4.0 GPA in your
16 numerator, right?

17 A. We consider students with a 4.0 GPA that have at least 12
18 hours because they have proven that they can keep their 4.0.

19 Q. Many colleges send invitations out on their own. PTK does
20 not send the invitations to students, is that correct?

21 A. What was your -- how many colleges?

22 Q. Many.

23 A. Not many.

24 Q. How many colleges?

25 A. It is on the spreadsheet. All those ones with zero, which

1 is a hundred and some out of 1200 and -- you know, or out of a
2 little over a thousand colleges.

3 Q. Okay.

4 A. So I would say less than ten percent or so of colleges
5 send their own invitations.

6 Q. And those ten percent of colleges that send invitations,
7 those invitations are not reflected in your numerator, correct?

8 A. Those invitations may not say top ten percent, I guess. I
9 don't know. I can't sit here and speak to what other colleges
10 are doing. I can only tell you what we are doing.

11 Q. Exactly. And what you are doing is not including in your
12 numerator invitations that have gone out to students with 3.5
13 GPAs and 12 credits, correct?

14 A. Not included in -- the numerator is zero for those
15 colleges on that spreadsheet. The percent is zero.

16 Q. Even though those colleges have sent invitations on PTK's
17 behalf to students with a 3.5 GPA and 12 credit units, correct?

18 A. Did they? I don't know.

19 Q. Didn't you testify that schools send out their own
20 invitations?

21 A. We ask them to, but I can't sit here and tell you that --
22 sometimes if there's no advisor -- you might get a zero because
23 they don't have an advisor and they haven't found one, or maybe
24 during COVID someone quit and they haven't gotten someone to
25 fill in the role. Those zeroes may mean nothing is happening.

1 Q. So at some colleges, you think no invitations are being
2 sent out?

3 A. Yes. At some colleges, no invitations might be not sent
4 out for whatever reasons.

5 Q. And at those colleges where no invitations are being sent
6 out, you would agree there are students who have a 3.5 GPA and
7 12 credit units, correct?

8 A. You would agree that no one is receiving any kind of
9 message that you are in the top ten percent of anything if you
10 are not getting an invitation. So why would you have an issue
11 with colleges that are not doing membership?

12 Q. Some of those schools on your spreadsheet reflect that,
13 like, three invitations go out, correct?

14 A. No. Everyone was counted once.

15 Q. On the spreadsheet, you have included the number of
16 invitations that go out for each school, correct?

17 A. Unduplicated for a whole year.

18 Q. And some of those schools have only sent out three
19 invitations, correct?

20 A. I don't know.

21 Q. Some have sent out zero invitations, correct?

22 A. I don't know. You are going to have to tell me what
23 school you are talking about, what FOIA request you are talking
24 about, before I can talk about an individual college.

25 Q. So you don't remember seeing on your spreadsheet that some

1 colleges sent out zero invitations?

2 A. We just talked about that.

3 Q. You do remember it?

4 A. Yes. If it has a zero, one of two things is happening.
5 One, no one is getting an invitation, or two, they are doing it
6 themselves, and I don't know what that invitation says.

7 A lot of them come out from the college president. They
8 like to personally sign their invitations. That's what's going
9 on at some of those schools.

10 Q. And when the college president sends out invitations, it
11 goes presumably to students that have a 3.5 GPA and 12 credit
12 units, correct?

13 A. It goes to whatever the criteria that it takes to be in
14 Phi Theta Kappa.

15 Q. But they aren't included in the numerator, are they?

16 A. If I don't -- if it's zero, then nothing is in the
17 numerator.

18 **MR. NEWMAN:** Thank you.

19 **MR. POLAK:** No questions, Your Honor.

20 **THE COURT:** All right. You may step down.

21 All right. There's no more testimony, I presume. Are we
22 ready for any arguments on the motion?

23 **MR. WALLACE:** Yes, Your Honor.

24 **THE COURT:** Any record preservation thing that anyone
25 needs to do? I saw y'all consulting.

1 Okay. All right. We are ready, then, for the argument.
2 Of course, PTK has the burden and will have an opportunity for
3 rebuttal.

4 **MR. WALLACE:** May it please the Court. Michael
5 Wallace for PTK.

6 **THE COURT:** Make sure you are speaking into the
7 microphone, Mr. Wallace.

8 **MR. WALLACE:** You already told me everybody can hear
9 me, Judge.

10 **THE COURT:** The court reporter has the things in her
11 ears.

12 **MR. WALLACE:** Michael Wallace for PTK and
13 Dr. Tincher-Ladner.

14 I told you last week we had already talked to you about
15 the law. More importantly, you have talked to us about the
16 law. You have issued a preliminary injunction in this case and
17 you have told us what the law is. The preliminary injunction
18 you issued was on preliminary relief on our two state law
19 claims for malicious interference with business. And based on
20 the communications before the Court, at that time you found
21 that we were substantially likely to succeed on the merits of
22 those state law claims, and you decided that we met the other
23 three *Canal Authority* factors as well.

24 So the only question before you now is not so much about
25 the law, it's about how the new facts you have heard apply to

1 the law that you've already declared. And we are talking about
2 new communications. But the only difference between the new
3 communications and the old communications is they took away a
4 question mark and put a period. The last time they sent these
5 questions, and Mr. Polak went over the six questions with you,
6 but in short form, they said, Would you think less of PTK if
7 you knew they were liars and thieves? And Your Honor decided
8 that was an insinuation that we were liars and thieves, and it
9 was an insinuation that ought to be enjoined.

10 There is no insinuation anymore. They are sending out
11 direct statements that we are liars and thieves, and we're
12 asking you to enjoin those. And we think you will find, as you
13 will already have found, that the suggestion that we are liars
14 and thieves is likely to be a violation of our rights under the
15 Mississippi tortious interference with business law.

16 So what you found last time was that they had malicious
17 intent to harm PTK's lawful business. And you followed Judge
18 Guirola's order in *Multiplan* which says, if somebody is trying
19 to harm your reputation, that is hard to quantify, but it is
20 substantially likely you are going to find damage when you look
21 at it, and, therefore, you decided we had met that part,
22 substantial likelihood of success.

23 We are not just relying on *Multiplan* now. We have now
24 specified the particular damage that we have suffered since
25 these communications started. We have given you a list. It is

1 under seal, but there are about 20 people who have left PTK.
2 Their names are there. It is under seal. We have given you
3 evidence that the universities and businesses that have been
4 participating in our PTK Connect program, that's down by about
5 15 percent since all of this started. That certainly looks
6 like proof of damage, certainly as much as we had last time,
7 and I would say a great deal more.

8 So what they say in their brief this time is we haven't
9 proved that their malice caused our damage. Well, as you've
10 noted several times, it's a preliminary injunction. We are not
11 going to try the whole case yet. The question is, do we have
12 substantial likelihood? I would say when you've already found
13 that they maliciously intend to harm us, and now we have proven
14 that we have been harmed, it is substantially likely that when
15 we get to trial, we are going to be able to close the gap and
16 show that what they intended to do is exactly what they did.
17 It is certainly possible that there are other causes of a
18 downturn in anybody's business, but they haven't suggested what
19 any of them are. All we know is that they went out to hurt us
20 and that we have been hurt. I think that is good enough under
21 *Multiplan* and good enough under any preliminary analysis of a
22 tortious interference claim.

23 So we think the new communications are even more damaging
24 than the old communications. We think we have already met all
25 of the four *Canal Authority* issues. And the only real question

1 is whether they have got some kind of an affirmative defense to
2 the proof we are likely to be able to establish at trial.

3 You've mentioned several times their First Amendment
4 defense, which I'm prepared to talk about. I was a little
5 surprised before lunch to hear there recrimination defense.
6 Your Honor, when I was doing divorces back in Biloxi back in
7 another century, we had a defense called recrimination. It
8 meant that if your spouse had done something to you and you had
9 done the same thing to your spouse, you couldn't get a divorce.

10 And that's the defense they have issued here this morning,
11 well, we lie about you, but you lie about us. It's not in
12 their brief. It's not in their pleadings. I don't think it is
13 in the law.

14 I don't think that you can excuse tortious and malicious
15 interference with somebody else's business by saying they are
16 just as bad as we are. It's certainly not something they can
17 rely on here because they've never pled it and they've never
18 briefed it, and they've never showed us anything to suggest it
19 is a law. If they want to come back and file a malicious
20 interference claim and get a preliminary injunction on it, we
21 can come here and talk all day about what we did to them and
22 what we didn't.

23 But as Your Honor said before lunch, I can assume all of
24 this is true and I can assume all of it really happened. Does
25 it make any difference to this preliminary injunction? The

1 answer is no, for a lot of reasons. But we do have a First
2 Amendment defense. Of course, they asserted that last time.
3 And the Court issued the order and I think the Court probably
4 considered their First Amendment defense, but we need to
5 consider it a little more carefully today.

6 The fact is that commercial speech does not get protection
7 under the First Amendment when it is false, misleading, and
8 deceptive. That's the law. That comes from the *Bolger* case
9 from the Supreme Court, and the *Bolger* case says that if you
10 have got those three things, it is probably commercial speech.
11 The Fifth Circuit analyzed *Bolger* in the *Procter & Gamble* case
12 several years ago. They said, here are the three things you
13 have got to find: You have got to find that the speech is an
14 advertisement; you've got to find that the speech refers to a
15 product or service; and you've got to find that there's an
16 economic motivation for the speech. That's the sequence the
17 Supreme Court listed them in.

18 The Fifth Circuit, in *Procter & Gamble*, says, you know,
19 the first thing you really ought to look at is the economic
20 motivation. If there is an economic motivation, it's a pretty
21 good idea that what you are talking about is an advertisement
22 of one form or another.

23 So their motivation for talking about us is pretty clearly
24 economic. They filed an antitrust action which is not before
25 you now except to the relevant factor that they claim to be our

1 competitors. So they have got an economic reason for telling
2 the world that we are bad people, because if the rest of the
3 world decides not to do business with them -- with us, they
4 might go do business with Honor Society.

5 And if there was any doubt that these communications were
6 commercial, then why in the world would they have asked for a
7 bond? They are saying this isn't commercial speech, but if you
8 don't let us make this speech, we are going to be commercially
9 damaged, so we want a bond. I don't think there is any more
10 clear proof that you could have that the communications they
11 are setting out there are commercial speech. And -- or
12 economically motivated speech.

13 So we have established the third factor of *Procter &*
14 *Gamble*. That tells us we have probably established the first
15 factor, Is this communication an advertisement? And what the
16 Fifth Circuit said in *Procter & Gamble* is an advertisement can
17 go either way. It can be a positive advertisement in our
18 favor. It can be a negative advertisement against you. A
19 positive advertisement says we are great. A negative
20 advertisement says we are terrible.

21 The advertisement in *Procter & Gamble* Your Honor may
22 remember. There were Amway distributors that were saying that
23 the trademark image *Procter & Gamble* used on its product was
24 satanic. I don't think you get much more negative than
25 accusing somebody of being satanic. It was a satanic

1 accusation. That was a negative advertisement. So the Fifth
2 Circuit says you have an economic motivation, you have a
3 negative advertisement, and the next question is, does it refer
4 to a product or service?

5 And here it certainly refers to a product or service.
6 What they are telling people is that the service we are
7 providing, whether it is scholarships or anything else, is not
8 real, we are not telling the truth about it, do not believe
9 that the service Phi Theta Kappa says it can provide for you
10 will really happen. Those touch all three bases.

11 This is clearly commercial speech, and it is clearly the
12 case that there is no First Amendment protection. The Fifth
13 Circuit says that in *Procter & Gamble*. It says that falsehood,
14 deception and misleading speech is not protected. The *Eastman*
15 case cited in the briefs says you can't do deceptive or
16 misleading speech.

17 The *Gibson* case says the same thing. And the *Gibson* case
18 says one other thing that I think is very interesting. We have
19 talked about prior restraints. The *Gibson* case says a prior
20 restraint is the prohibition of saying something you haven't
21 said yet. You believe something is about to come out and you
22 restrain people and say, you can't say that.

23 That is not this case. All of this has already been said.
24 We have given you what they have already said. It is in that
25 big, thick binder. We went through all of it. It's not a

1 prior restraint. It is already out there. So you can order
2 them today to take it down and quit saying it.

3 The *Eastman* case, the question was, Can you prohibit the
4 use of a sales brochure? It wasn't a prior restraint. The
5 sales brochure was already out there. The Court looked at it
6 and said, it is false, misleading and deceptive, and you can't
7 use it.

8 We are certainly in that position here today, which is
9 that this material is already out there. I think you can find
10 it's false, misleading and deceptive, and I think you can order
11 them right now to take it down.

12 I will stop and say that poor Mr. Polak has lived with all
13 of the facts in this case, and if you have got any questions
14 about whether anything particular out there on those websites
15 is true, false or otherwise, I will be perfectly happy to have
16 you direct them to him, but I think you've told us you have
17 heard the evidence, and now I just want to talk about the law.

18 **THE COURT:** Let me ask you this about the law, a
19 couple of questions. Some of what I've seen and heard is Honor
20 Society's telling the public about the specific lawsuit. These
21 are the claims that somebody has brought against Phi Theta
22 Kappa.

23 **MR. WALLACE:** Uh-huh.

24 **THE COURT:** These are the claims. People have
25 accused them of X. And I'm not sure if it's obvious from some

1 of it that they are the accuser. We filed a counterclaim. I'm
2 not sure if there was any reference -- I'm not positive if
3 they've owned up to the statements, but even if they did own up
4 or whether they didn't, we do know that those are allegations
5 of this lawsuit. And I guess, can they stand up to the world
6 and tell people what is in a publicly filed lawsuit?

7 **MR. WALLACE:** Generally they can. We have asked in
8 the alternative for a gag order, but the gag order would say
9 you can stand up and tell the world what's in the lawsuit. I
10 think the *Brown* case, and I will get to the gag order when I
11 get to it, says you do that without elaboration.

12 They have criticized us for talking about editorializing.
13 All right. Take out editorializing and do elaborating, because
14 that's the language the *Brown* case uses. Yes, I think they can
15 say that, that we have filed the lawsuit and here are the
16 claims we have made. But what you see in the articles and
17 notices we've gone over in these two hearings is a lot more
18 than that. And I think it is false, misleading, certainly
19 misleading, certainly deceptive.

20 Some of them they say Honor Society brought these claims,
21 and a lot of them they don't say Honor Society brought these
22 claims. I think that is deceptive. And the factual statements
23 they make are, you know, critics are wondering why -- critics
24 are wondering why Honor Society is doing this. It reminds me
25 of what President Trump likes to say. He says, "People are

1 saying this." And when President Trump says that, he means,
2 I'm saying this. Nobody ever identifies the people who are
3 saying this.

4 Their websites read like a Donald Trump tweet. "People
5 are saying Phi Theta Kappa is bad." What people? The only
6 people that are saying that are Honor Society, and on most of
7 these websites, they don't fess up and say the only people
8 complaining about Phi Theta Kappa is us. I think you found
9 that to be deceptive once already in this case, and I think it
10 is still deceptive.

11 Let me say a word about remedy. One remedy you can and
12 should give is take all of this down.

13 The next question is, what do I say about the stuff they
14 haven't thought of yet? And as you know, sitting as the
15 Chancellor, you have to be very, very careful about what you
16 put into an injunction. You have to be clear about what it is
17 you are forbidding so that people have notice of it, because if
18 they disobey your order, they can go to jail, and that is
19 serious business. So you have to be careful. And you were
20 careful in your last remedy.

21 You went through everything they had done, you described
22 what they had done, and your order was basically, "Don't do
23 this again." You didn't go any broader than that to say, "And
24 don't do anything like it again." You were very narrow, as I
25 think a preliminary injunction generally ought to be. But the

1 problem with being narrow is a litigant like Mr. Moradian, who
2 sat here this morning and said, You told me I couldn't ask
3 questions. You didn't tell me I couldn't do -- couldn't do
4 statements. I have kept the words of the order, and so I
5 haven't done anything wrong.

6 Your Honor may have had other experiences than what I have
7 had with fatherhood. I can look at my oldest child and say,
8 take the beans out of your right ear, and she would take them
9 out of the right ear and look me straight in the eye and put
10 them in the left ear. That's what Mr. Moradian did this
11 morning: You told me not to ask any more questions. I didn't
12 ask questions. I'm going to look you straight in the eye and
13 tell you I'm making flat out statements that Phi Theta Kappa
14 are liars and thieves.

15 I don't think you could have anticipated that when you
16 issued your first injunction, but it's certainly happened now,
17 and I think you have to have a broader injunction that will get
18 the message to Mr. Moradian that it is the content that
19 matters, it's not the format that matters, whether it is a
20 question, whether it is a statement, whether it is a press
21 release, whether it is 5,000 web pages. And you know I don't
22 know the difference between web pages and websites, but there's
23 a lot of stuff out there, and if you are doing this content
24 saying that Phi Theta Kappa are liars and thieves, you need to
25 stop it. I think you need -- as I told you this morning, you

1 need more words and broader words than you used last time.

2 So we think you have established the need for a
3 preliminary injunction.

4 **THE COURT:** If the Court were to grant it, if the
5 Court were to grant it, Mr. Wallace, we will have to be careful
6 with the words that we use and how narrow or how broad it is,
7 but if the Court were to grant it, would PTK submit something
8 to the Court in terms of what it ought to look like?

9 **MR. WALLACE:** It is in our motion. If you look at
10 the end of our motion --

11 **THE COURT:** I guess if you just read to the end.

12 **MR. WALLACE:** -- we have this is what a preliminary
13 injunction ought to look like, and then in the next paragraph,
14 this is what a gag order ought to look like.

15 And a gag order, by the way, which I will address now,
16 goes both ways, and it is about protecting the integrity of the
17 Court and particularly about protecting the right to an
18 unbiased jury. That's a related but separate issue, and we
19 have asked for it.

20 We think that the gag order here is justified under the
21 *Brown* case and the *Marceaux* case. The *Marceaux* case is a civil
22 case applying the *Brown* rule, and the *Brown* rule says there can
23 be prior restraint of communications about the trial when there
24 is a substantial likelihood of prejudice to a fair trial. Will
25 it infect the jury; will it not? That's the problem we are

1 facing.

2 What *Marceaux* approved was a gag order limiting the
3 parties to talking about what's on the public record, the
4 identification of the claims and defenses. That's the question
5 you asked before: Can they say we have these claims pending?
6 Absolutely they can. And the scheduling of or the result of
7 any step in the litigation, they would be able to walk out and
8 talk to people today about what happened in this courtroom
9 today. That is what we are asking you to do.

10 The only thing *Marceaux* disapproved was shutting down the
11 entire website that was in question, and we are not asking you
12 to do that. We are asking you to limit the communications on
13 both sides.

14 Now, they say that this case isn't a circus like the *Brown*
15 case. And Your Honor is well aware, nobody puts on a better
16 circus than Louisiana elected officials, and the *Brown* case was
17 certainly a circus. But the *Marceaux* case points out that
18 circuses have changed in the computer age. It points out you
19 could have an article on the front page of the newspaper and
20 nobody would ever see it.

21 I think that is particularly true of the *Clarion Ledger*,
22 although their press release has been on *Jackson Jambalaya*,
23 where I think it is much more likely to be seen. But even so,
24 it goes out to thousands of people on the internet. You can't
25 tell there is a circus going on because it's not all out in

1 front of the courthouse. The circus is in hundreds of
2 thousands of homes all over the country where people are being
3 subjected to what they say about this lawsuit, and they
4 testified we have hundreds of thousands of people coming to our
5 website all the time.

6 Now, I don't know where all of those people live, but
7 we've shown you what happens in this judicial district, in the
8 Jackson division if you Google Phi Theta Kappa and the local
9 community college, and you get the stuff they are putting up.

10 So I have no doubt in my mind that there are people who
11 are either going to Hinds or they are sending their children to
12 Holmes, or they have something to do with Co-Lin. Those are
13 all in this district. And if anybody is looking up those
14 places, what they are seeing is what they have got out there.
15 And in the computer age, hundreds of thousands of people
16 looking at this stuff seems to me to be a circus, and I think
17 it calls for the gag order that was approved in *Marceaux*, which
18 is like the one in *Brown*.

19 One thing we know for sure, Mr. Moradian told you how hard
20 it is to put this stuff out there. He's not doing this just
21 because he thinks no one will see it. He thinks people will
22 see it, and he told them what he wants them to do. He said he
23 wants people to see it, and he wants it to be impactful to
24 their decision-making. I'm not sure whether impactful is a
25 word, but the decision-making he is talking about is whether

1 they decide to do business with Phi Theta Kappa. That's why he
2 put it out there. That's why he is spending this money on it.
3 He thinks it is going to have an effect. And I think that it
4 may very well have an effect. And to preserve the integrity of
5 our jury, you need to tell him to stop.

6 I think we are entitled to a preliminary injunction. I
7 think we are entitled to a gag order. And one other thing you
8 are saying that we are entitled to is sanctions.

9 I haven't come in here asking for contempt because I know
10 how serious contempt is. And they say you can't sanction them
11 because you can't prove intentionally they violated the
12 contempt order.

13 Your Honor will remember I was counsel to the Senate
14 majority leader for the Clinton impeachment trial. I learned
15 there that there are people in this world who will argue all
16 day and night about what the meaning of "is" is. One of those
17 people sits right over there. And I don't want to spend the
18 rest of my life arguing about whether he violated your order or
19 whether he didn't, but it is clear he is doing everything he
20 can to get his way around it.

21 And if he is going to do it, if he didn't take the
22 education you gave him last time that this is bad stuff and you
23 ought to stop saying it, every time he finds a new way to say
24 it, we will be happy to bring him back in here and let you tell
25 him again, but he ought to get an education at his expense, not

1 ours. He ought to be the one to pay for putting us and putting
2 you through everything we have learned over these two days of
3 testimony.

4 Our brief has indicated the cases that allow you to
5 sanction him, whether he technically violated your order or
6 not. You will read them, you will decide whether or not they
7 apply, and you will decide how far he is off the reservation.
8 My view is he is pretty far gone, and I think Your Honor needs
9 to bring him back by, again, making him pay for the education I
10 think we are all about to get once again from this Court.

11 If you have factual questions, I will turn it over to Mr.
12 Polak. Unless you've got any legal questions, we have talked
13 about this before, I will sit down.

14 **THE COURT:** There is just this one question that I
15 had, and it may not even be -- I'm going to ask it before the
16 end of the day because I just feeling a burning to ask it.

17 **MR. WALLACE:** I will sit down and we'll talk when you
18 are ready. Thank you, Judge.

19 **THE COURT:** All right. You may proceed.

20 **MR. NEWMAN:** Thank you. I'm going to start with a
21 brief recitation of the facts that I think are undisputed that
22 we learned during the evidentiary hearing. I will then talk
23 about the preliminary injunction and the gag order and then the
24 request for fees.

25 I will start with the facts. PTK doesn't know if any

1 student is in the top ten percent of classes.

2 Dr. Tincher-Ladner admitted colleges never tell PTK whether any
3 student is in the top ten percent, but rather colleges only
4 inform PTK if students have a 3.5 GPA, sometimes as low as a
5 3.25 percent GPA, but we don't know whether that constitutes
6 the top ten percent.

7 PTK never verifies whether any student is in the top ten
8 percent but yet represents that all students are. PTK sends
9 letters advertising that students maintain their top ten
10 percent, but PTK doesn't verify. And we have heard testimony
11 that students who join PTK are members for life, so there
12 couldn't be a verification that they continue maintaining a top
13 ten percent requirement. And, of course, PTK has admitted that
14 it doesn't know that any student is in the top ten percent,
15 only that it had a 3.5 GPA at some time.

16 Dr. Tincher-Ladner's calculations don't make sense. She
17 uses a 17 million student number in a numerator, when I think
18 it is clear that there are only five million students in the
19 whole country, and many don't have a PTK chapter. So if
20 there's five million students, considering all the invites that
21 PTK sends, that's only the top 22 percent, assuming that
22 everyone is at the top of their class.

23 And there's an arbitrary increase of 70 percent of
24 students who are enrolled in credit-taking programs, which
25 doesn't make sense, because if a student isn't enrolled until a

1 credit-taking program, then it can't be compared against
2 students who do. It's not ahead or behind because there aren't
3 any grades to judge it against, which means that PTK's numbers
4 are artificially inflated because it is including students who
5 are not seeking a degree, and thus they wouldn't be ranked
6 against students who are seeking a degree.

7 PTK's invitation number also doesn't include students who
8 have already joined PTK. So if a student joins PTK after the
9 first semester, when invitations go out the second semester,
10 that student who joined first semester is not included, but yet
11 they have a 3.5 GPA as well, and so they should be included in
12 the numerator, and it artificially depresses the numerator.

13 **THE COURT:** If the Court agrees with you on that
14 issue, that PTK has somehow misled the students or somehow --
15 when the numbers all are dissected and looked at, it's not the
16 top ten percent, admittedly, or it's not -- there's a question
17 of whether it's the top ten percent, it might be top 12 or top
18 15 percent -- if the Court says that that's correct, that
19 there's a dispute about that, that what you say may be true,
20 what they say might not be true, what about the other steps
21 that Honor Society has taken to encourage -- to encourage
22 persons to not trust or not -- to what they contend is
23 interfering with the business relationship?

24 So that is one aspect of it. You are saying what we are
25 saying is true on that. What about all the other stuff, or any

1 of the other stuff, like the Honor Society website,
2 HonorSociety.Org. It says here your PTK chapters, and then you
3 drop down and you look at every chapter and what comes up is
4 the stuff about the lawsuit, the other stuff.

5 So, again, assuming that based on what I've heard the last
6 couple of days, there is some confusion about whether or not it
7 is the top -- everyone who receives the invitation is actually
8 in the top ten percent of their class, because the question I
9 wanted to ask, you know, it might be possible, I would think,
10 for the persons who are invited locally by the schools to have
11 also received an invitation from PTK. So that number might be
12 messed up in that way. The number might be messed up in a way
13 where somebody has said, Please don't send this to me again,
14 exclude me from your list, unsubscribe me, but PTK, like
15 anybody else, we have unsubscribed, unsolicited text messages
16 and e-mails that we get all the time, and we say, Please take
17 me off your list, and then you get them.

18 So if I accept your proposition that they are wrong with
19 respect to the top ten percent, is it over at that point for
20 them? I mean, does that close the door for any relief that
21 they might get, if I agree with you on that, notwithstanding
22 some of the other stuff?

23 **MR. NEWMAN:** The relief that they seek is foreclosed
24 for several reasons, but if the Court is asking whether other
25 statements that Honor Society makes are untrue, the answer is

1 no. The list of directories, for example, a directory is just
2 a list of something, and there is a directory of schools there.
3 Click on the school and true statements appear. There aren't
4 any false statements. It is true what Honor Society publishes
5 on the page in response to the directory link.

6 We can look at other things that Honor Society published.
7 For instance, Honor Society notices that PTK sells student data
8 without consent. And Tincher-Ladner admitted PTK receives a
9 fee for access to student data, that to me is selling student
10 data, but PTK never discloses to students that it sells data.
11 Rather it informs students that it and its partners were sent
12 marketing. It doesn't say who those partners are. There's not
13 a link to see who the partners there. It is buried in fine
14 print. It violates advertising laws to bury something in fine
15 print that might be confusing.

16 **THE COURT:** The law hasn't been determined on that.
17 And I guess me or somebody else would figure out what the law
18 is, but they -- they have informed students, I thought I saw an
19 exhibit, that you have given us your information, and we have
20 the right to share the information with our partners.

21 **MR. NEWMAN:** They don't say who the partners are.

22 **THE COURT:** Do they have to?

23 **MR. NEWMAN:** Yes, because false --

24 **THE COURT:** What law tells me or them that they have
25 to tell the student who they give the information to.

1 **MR. NEWMAN:** Sure. False advertising law requires
2 that anything that would be material to a purchasing decision
3 must be clear and conspicuous. Here we saw the terms and
4 conditions buried in fine print. It says, "transfers to our
5 partners." Partners, to me, says, like, you know, legitimate
6 business partners, like a subsidiary and the like. It doesn't
7 mean sell data to the highest bidder. Perhaps thousands, tens
8 of thousands of buyers so that students will be bombarded with
9 spam and other messages that have nothing to do with PTK.

10 It is false advertising, and Honor Society has a right to
11 publish about that. And if there is a disagreement as to
12 whether that is false advertising, and I don't think there
13 should be because it's material and it's not clear and
14 conspicuous, then PTK's remedy is to post its own information
15 explaining why that's not false advertising. But the reality
16 is, if PTK advised students that they are selling student data,
17 PTK would get less student sign-ups. And that's something of
18 public concern that the public should know, and PTK should have
19 the right to advise the public about.

20 Those other posts up that were discussed today, for
21 example, that the former executive director was accused of
22 sexual harassment, Tincher-Ladner admitted PTK's former
23 executive director was accused of sexual harassment of at least
24 two women, so that is true.

25 There was discussion of embezzlement. Tincher-Ladner

1 admitted a PTK chapter advisor was indeed arrested for
2 embezzlement, so that is true. In talking about the press,
3 Tincher-Ladner admitted there has been no meaningful press
4 coverage. There is a Bloomberg article or two in response to
5 PTK's own press release. There is a blog post at *Jackson*
6 *Jambalaya*, but nothing more than that.

7 And importantly, Dr. Tincher-Ladner admitted that she
8 knows not of a single contract or sale that was lost from Honor
9 Society's articles. She says that she assumes that they were
10 lost. I said, "Assumes?" And her counsel objected, and the
11 Court said she testified assumes. An assumption is just mere
12 speculation. The record is clear that she is unaware of a
13 single lost contract or sale from Honor Society's articles.

14 So I'm going to move to the law. I did want to summarize
15 the facts, but I'm going to talk about the preliminary
16 injunction first. The Court should deny the preliminary
17 injunction for three reasons. The first the Court is well
18 aware of. We have talked about it. It's perhaps the biggest
19 issue of the case. That is the First Amendment. The second
20 reason is the litigation privilege. And the third is that PTK
21 cannot meet two elements of its claim, so it's not
22 substantially likely to succeed on the merits.

23 I'm going to start with the First Amendment. So the First
24 Amendment protects all speech except for a limited category.
25 We cite all of this in our brief. I'm happy to provide the

1 case names. I hope the Court will spend quality time analyzing
2 the briefs. But lewd speech, obscene speech, profane speech,
3 fraudulent speech, speech that incites immediate lawlessness,
4 that speech isn't protected. And defamatory speech is not
5 protected, and perhaps that's what PTK is relying on.

6 Something being false, that's not an exception. False
7 speech is protected unless it is defamatory. And for something
8 to be defamatory, there are a couple of elements that have to
9 be met: First, there's got to be a false statement. But
10 second, the speaker has to commit negligence, or, in the case
11 of a public figure, actual malice.

12 And I think that we have reviewed enough to know that none
13 of Honor Society's articles contain false statements. I think
14 there are arguments that they are misleading, but I don't think
15 there are any valid arguments that they contain false
16 statements.

17 But in any event, we heard Mr. Moradian testify why he
18 believes each statement is true. I think that testimony was
19 authentic, compelling, real. I think the Court should believe
20 him. And to the extent the Court believes him, even if the
21 Court thinks a statement is false, and I don't think any were
22 false, but to the extent Mr. Moradian believed they were true,
23 he did not commit negligence, thus cannot meet the element for
24 defamation. So even if it is false, it is still protected.

25 I should also point out that PTK's papers make it sound

1 like it is a public figure, in which case he would have to have
2 actual malice. And what that is under the law is that he knows
3 for certain that the statement was false. It's not just a
4 disregard. And I don't believe that Mr. Moradian considers any
5 of those statements false. He explained why. And the fact
6 that he has a good faith belief in them means they are not
7 defamatory. And if they are not defamatory, even if false,
8 still protected under the law.

9 I could cite a series of cases for that, but it is all in
10 our brief, so I hope the Court will spend time on that.

11 I think the substantial majority of the statements that
12 PTK complains about is not any false statement but rather PTK
13 argues statements are misleading. Misleading speech is
14 protected under the First Amendment, with one exception, and
15 that is commercial speech can lose protection. And if
16 something is misleading and it's commercial speech, it doesn't
17 automatically lose protection. There are other elements
18 involved. There has to be materiality and deception and
19 impacts a purchasing decision. And the reason why is because
20 misleading speech is not an exception to the First Amendment.
21 Fraud is an exception to the First Amendment. So if it is
22 misleading and it's material and causes deception and impacts a
23 purchasing decision, and if it is commercial speech, it might
24 be unlawful.

25 **THE COURT:** Suppose the Court finds that it's

1 commercial speech that is misleading. Then we go down to the
2 other things that you say must have to prove, whether it
3 discourages one to, you know, lose customers, for example. I
4 think Mr. Moradian testified he's trying to get this word out
5 to as many people as possible because the community needs to
6 know about this fraud. I think he used the word "fraud" a few
7 times out of his mouth, defrauding people or they are doing
8 this. And as a citizen, he didn't use the word "citizen," but
9 we all have an obligation and a duty, something, words to that
10 effect is what he said. So the idea of putting it out there, I
11 think the question was about 5,000 -- why 5,000 pages or why
12 5,000 web pages as opposed to just 10? Why not -- and the
13 thing that I thought about, why not 10,000? I don't know what
14 was the magic with 5,000. Maybe 5,000 did put the notice --
15 gave everybody the notice that Mr. Moradian thought that they
16 should have. It reached to everybody who he thought it should
17 reach.

18 So what if the Court believes it is commercial speech,
19 that it is misleading? Have they proved the rest of the
20 elements that you said that they have to prove after that
21 point?

22 **MR. NEWMAN:** So to answer that question, I think I
23 first have to address what is commercial speech? Commercial
24 speech, according to *Central Hudson Gas and Electric Corp.*
25 *versus Public Service Commission*, it must propose a commercial

1 transaction. In other words, it's an advertisement. And the
2 Fifth Circuit, in the case *In Re: National Services Corp.*, held
3 that commercial speech is expression related solely to the
4 economic interest of the speaker and its audiences. It has to
5 be related solely to the economic interest of the speaker.

6 **THE COURT:** So because someone is doing it out of the
7 good of their heart and making money, the Fifth Circuit would
8 say, because they are doing it out of the good of their heart,
9 because they are doing something else other than just making
10 money, it's not commercial speech.

11 **MR. NEWMAN:** Yes, and the reason why is because the
12 United States Supreme Court has held that speech that's a
13 matter of public concern is always protected, even if it's in
14 an advertisement. So if the expression is not related solely
15 to the economic interest, if it's a matter of public concern,
16 it's protected.

17 **THE COURT:** And the matter of public concern here
18 would be education of people who are thinking about education
19 in the community college or education period, presumably.
20 That's a matter of public concern.

21 **MR. NEWMAN:** The colleges and students are being
22 misled, and Honor Society believes that that's a matter of
23 public concern and that they should know that they are being
24 misled. In *In Re: National Service Corp.*, the defendant put up
25 a big billboard that said, "Beware this company does not pay

1 its bills, and beware this company is in bankruptcy." And the
2 plaintiff alleged those billboards were false. And the
3 District Court agreed and issued a temporary restraining order
4 and a preliminary injunction. But the Fifth Circuit reversed
5 and held that because they weren't a solicitation for the sale
6 or purchase of a product or service, they don't qualify as
7 commercial speech.

8 And here, Honor Society's articles are not a solicitation
9 for the purchase of a product, so they are not commercial
10 speech under the Fifth Circuit standard in *In Re: National*
11 *Service Corp.*

12 And I should also note, Your Honor, that none of the
13 articles are misleading in any event. They editorialize the
14 lawsuit. They provide opinions. They directly relate to the
15 lawsuit and summarize allegations, but they aren't misleading.
16 Images of a woman with money and red alert images, that's art
17 not capable of being proven true or false at all. It is
18 farcical parody. And if it can't be proven true or false, then
19 their message can't be misleading. It is a type of artwork
20 that's traditionally protected by the First Amendment.

21 The page that PTK claims is the voice of the colleges, I
22 think if the Court reads it carefully, it's not in the voice of
23 the college, it is on a page that's obviously by Honor Society,
24 because it has Honor Society's logo, it's on Honor Society's
25 web page. And I should note it was removed a week before this

1 motion was ever filed, not in response to this motion but
2 before it was ever filed, which should indicate that the plan
3 wasn't to keep it up in any event. Mr. Moradian saw it, he
4 didn't like it, he wanted to edit it, he removed it, and it
5 wasn't because this motion was brought. It was done before
6 this motion and before counsel brought to my attention that
7 these articles were on the internet.

8 So the Court should deny the preliminary injunction
9 because the First Amendment protects Honor Society's speech in
10 any event, even if it is false, unless it is defamatory, but we
11 have heard that Mr. Moradian had a good faith basis. And it's
12 not commercial speech, and if it is commercial speech, it is
13 not misleading.

14 The Court should also deny the preliminary injunction
15 because of the litigation privilege. This Court has already
16 issued an order about the litigation privilege when PTK was
17 sending letters to colleges stating that Honor Society was
18 committing a scam, and the Court found that it was related
19 enough to PTK's allegations that it fell within the litigation
20 privilege. And the difference between sending letters directly
21 to colleges and putting up pages on its website is what PTK did
22 is reach the audience directly because PTK has that
23 relationship and ability, whereas Honor Society doesn't have
24 the relationship and ability and so it is less likely to reach
25 its desired audience.

1 So I would suggest that under the litigation privilege --
2 it has even a stronger interest in stating what its allegations
3 are. And for the reasons that the Court said that PTK is
4 allowed to continuing telling colleges that Honor Society is a
5 scam, the Court should also agree that Honor Society has a
6 right to publish on the internet that PTK is misleading
7 colleges and students by making false statements, which I don't
8 think there should be a dispute about.

9 I'm going to move on to my next reason why the Court
10 should deny the preliminary injunction, and that is, PTK is not
11 substantially likely to succeed on the merits of its claim.
12 And that's the standard, substantially likely to succeed on the
13 merits of its claim.

14 I'm going to repeat arguments that I made last time that I
15 think the Court rejected, but this is a new motion, and I think
16 it is fair that I make those arguments again, especially
17 because if the Court issues an injunction, the case will go up,
18 and I want to preserve the record. So I'm going to make the
19 record.

20 The first argument is that the case law is clear that a
21 plaintiff cannot succeed on the merits of a case for tortious
22 interference without showing a specific lost contract or lost
23 sale. The standard is not likelihood of a breach of a contract
24 or a lost sale. The standard is there must be an actual breach
25 or lost sale. Why? Because we are in federal court. And in

1 federal court there has to be a case in controversy, which
2 means there has to be an actual injury, not mere speculation.

3 And what we cited in our brief, and again, I hope the
4 Court reviews it, is the overwhelming weight of authority shows
5 that PTK must show a lost contract or lost sale. And here,
6 Dr. Tincher-Ladner testified she is not aware of one, not one.

7 In fact, the plaintiff must show that lost contract or
8 lost sale with particularity specifically in its complaint.
9 And we cited a series of cases where judges dismiss the
10 complaint at the pleading stage for failure to identify a
11 specific lost customer sale. For example, Judge Wingate, in
12 *Pie Dev versus Pie Insurance Holdings* dismissed a complaint
13 where a defendant did not identify a particular lost customer
14 sale. Instead, the alleged defendants had unlawfully diverted
15 customers based on their actions. The plaintiff showed lots of
16 lost revenue that coincided with the defendant's actions. And
17 Judge Wingate said, if you can't identify a specific lost sale
18 or lost contract, case dismissed, at the pleading stage.

19 Similarly, in *Ronaldo Designer Jewelry versus Cox*, which
20 is a 2019 case from this district, the Court collected cases
21 and noted that Courts, quote, regularly, unquote, dismiss
22 tortious interference claims when a claimant fails to identify
23 a specific lost contract or sale in its complaint.

24 And we have reviewed cases from across the country in
25 federal courts, and we've only found two where a Court has

1 issued a preliminary injunction in a tortious interference case
2 where the plaintiff failed to identify a specific lost contract
3 or sale. The first was *MultiPlan*, and when I argued last time,
4 I said, *MultiPlan* is an outlier. And my friend, Mr. Wallace,
5 said, It's not much of an outlier. It came from this very
6 court. But what I meant by outlier is it came to a decision
7 that no other Court has come to, because it isn't based in the
8 law.

9 And the second injunction that was issued without a
10 particular lost contract or sale was this Court's decision.
11 And I would suggest, respectfully, because I'm grateful for the
12 Court's time and attention, and I know the Court is fair, and I
13 appreciate that I'm allowed to make this argument, but I would
14 suggest that the Court and the *MultiPlan* judge erred, because
15 the law is clear that the complaint must identify a specific
16 lost customer or sale. But here we are at preliminary
17 injunction. You would think that after all of this time, PTK
18 could identify just one lost contract or sale. I have a list
19 of 20 students who didn't renew. Just ask a student, Why
20 didn't you renew? I'm suspicious that they did ask, and no
21 student has said it was because of Honor Society's articles,
22 because if that was the case, it would be in the record. And
23 without a lost contract or sale, PTK is merely speculating, and
24 speculation is not allowed in federal court because there has
25 to be a case or controversy. There has to be an actual injury.

1 The standard isn't likelihood that there's a breached contract
2 or sale. The standard is there is a lost contract or sale.
3 And here, Dr. Tincher-Ladner admitted clearly that she can't
4 think of a single one because none exists.

5 **THE COURT:** Is the standard that there is a lost sale
6 or the standard is that they -- there's a substantial
7 likelihood to succeed that there will be -- that they will be
8 able to prove a lost --

9 **MR. NEWMAN:** That's not the standard.

10 **THE COURT:** That's not the standard?

11 **MR. NEWMAN:** No. The standard is substantial
12 likelihood of success on the merits. How do you succeed on the
13 merits? You must show a lost contract or sale. It's not a
14 substantial likelihood that there will be a lost contract or
15 sale. It's not a likelihood of lost contract or sale. The
16 standard is actual lost contract or sale, not a likelihood of a
17 lost contract or sale.

18 PTK relies on correlation, namely it lost money during the
19 course of this litigation, and that coincided with the time
20 that Honor Society published material. But the Fifth Circuit
21 has repeatedly noted in case after case, one is *Huss v. Gayden*,
22 one is *U.S. versus Valencia*. Again, we cited them on our
23 papers, so if the Court spends quality time with our papers, he
24 doesn't need to write them down. But the Fifth Circuit held,
25 noted several times, correlation is not causation. Evidence of

1 lost sales that coincide with allegedly wrongful conduct is not
2 enough. Why? Because, again, in federal court there has to be
3 a case in controversy, and you can't have one without an actual
4 lost sale. Speculation doesn't suffice. And that there is
5 correlation is mere speculation.

6 Dr. Tincher-Ladner admitted speculation. She said she was
7 assuming. She can't identify a single lost contract or lost
8 sale. The Fifth Circuit said that correlation is not
9 causation, and so PTK is not substantially likely to succeed on
10 the merits of its claim.

11 Then another element that they have to prove is that what
12 Honor Society did was wrongful. But Honor Society didn't act
13 wrongfully because it believed in good faith that everything it
14 was publishing was true. And it also has done so under the
15 First Amendment, so it didn't act wrongfully. And unless it
16 acts wrongfully, it can't commit tortious interference.

17 **THE COURT:** So the idea of maliciously doing
18 something is not wrongful? If the Court were to find that the
19 intent to -- the intent to harm PTK is there, you would still
20 say that that's fine, because it's not misleading or because I
21 should believe that they were doing the public good?

22 **MR. NEWMAN:** In part. In order for it to be
23 malicious under the law, it can't be for a legitimate purpose.
24 So if it is --

25 **THE COURT:** And that's the legitimate purpose here,

1 if it's not to drive people away from PTK or to drive people
2 toward Honor Society. That's the reason, right? Or is it
3 totally public good, like Mr. Moradian said? You know, when
4 there's a fraud out there, as a member of the public, we have a
5 duty to warn everybody else.

6 **MR. NEWMAN:** Honor Society has, as I discussed, a
7 First Amendment right to publish what it believes to be true,
8 and therefore it has a legitimate purpose. And if it has a
9 legitimate purpose, by definition, that cannot be malicious, so
10 the Court can't find that it has a malicious purpose.

11 **THE COURT:** So you have a right to publish or say
12 anything about someone, because in your mind, you believe it is
13 true?

14 **MR. NEWMAN:** Unless the defendant acts with reckless
15 disregard for the truth, yes. So the Court should deny the
16 preliminary injunction motion because of the First Amendment,
17 the litigation privilege, and because PTK is not substantially
18 likely to succeed on the merits of its claim.

19 I'm going to move to the gag order. The law on gag orders
20 is clear. The Supreme Court and the Fifth Circuit held that
21 there's a strong presumption against a gag order because of
22 speech concerns and that gag orders qualify as prior restraint.
23 I heard argument from PTK's. Counsel that a prior restraint
24 doesn't include stopping speech that is in progress. I've
25 never read that before. A prior restraint is stopping any

1 speech in the future. If it exists today and continues, it
2 exists in the future. That is a prior restraint. And the
3 Supreme Court has said that prior restraints are presumptively
4 invalid.

5 For a gag order, the standard has to be a substantial
6 likelihood that extrajudicial commentary will undermine a fair
7 trial. And both sides have cited the *Marceaux* case for that.
8 Substantial likelihood that extrajudicial commentary will
9 undermine a fair trial. So the question is, is the potential
10 jury going to be so exposed to facts of the case that they will
11 not be partial?

12 But the facts here aren't what PTK's papers claim they
13 are. The papers say that this case has been, quote, widely
14 publicized, end quote. We heard testimony, and PTK could only
15 cite a couple of Bloomberg articles that arise out of its own
16 press release and a blog post on *Jackson Jambalaya*. This case
17 has been going on for two years. There have been two cites to
18 the press in response to the press release, so once a year
19 there has been a small article that no one has seen.

20 There was discussion by PTK's counsel that a circus now
21 goes online, but the type of circus that Courts refer to is
22 when the public is so exposed because it is in the media and
23 they can't avoid it. They turn on the T.V., it is there. They
24 open a newspaper and it is there. But here, the public who
25 will serve as jury members have no exposure to Honor Society's

1 website.

2 We saw that the only way to see these articles is by doing
3 a search. So unless the jurors are doing a search, they will
4 not be exposed. And, of course, when potential jurors arrive
5 for voir dire, the Court instructs them not to do a search, not
6 to do any external research. So the substantial likelihood is
7 that no juror will have heard anything about this case. And so
8 it doesn't meet the standard that substantial likelihood that
9 extrajudicial commentary will undermine a fair trial.

10 And also, if there is going to be a gag order, the Court
11 has to exercise the least restrictive means at avoiding it for
12 trial. So cases have talked about voir dire, and here the
13 Court will have voir dire with the jurors and ask, Has anyone
14 heard of PTK? Has anyone heard of Honor Society? Has anyone
15 heard of the facts of this case? In the unlikely event that
16 jurors have, they will be excluded. They will not be on the
17 jury.

18 The Courts have also found that a transfer of venue might
19 be appropriate. I don't think that would be necessary here
20 because I don't think any potential juror is searching for
21 Honor Society on the internet, but that's another thing the
22 Court would need to consider before --

23 **THE COURT:** I've been thinking about that just a
24 little bit, not the transfer of venue, but the community
25 college system is large in Mississippi. We've been talking

1 about Hinds Community College. It has a campus in Raymond and
2 Utica and Ridgeland, and these are just right here, and
3 Jackson. That's one community college with four campuses, not
4 even -- well, three of which are in the same county. And then
5 other parts of the county in this district, you have Holmes
6 Community College, which has one in Ridgeland and in Holmes.
7 And they all have campuses -- I mean, they are designed to sort
8 of treat every county. That's the nature of them, to make sure
9 that people are skilled in whatever their training.

10 Of course, the online -- they all have an online component
11 now. And I don't know how many people are enrolled in all of
12 the community colleges in the Southern -- in the Northern
13 Division of the Southern District or the entire Southern
14 District, but the chances are that persons are getting ready
15 for college now or back in the spring, are looking at -- and
16 when their friends get stuff from Phi Theta Kappa or Honor
17 Society and I'm not getting something, I might be trying to
18 find out why I didn't get it.

19 So I am -- I'll tell you, I am somewhat concerned about
20 that, but I do think the Court could address that in ways in
21 which we could see if it -- if we would be prevented from
22 getting 7 or 8 people to try -- to sit as jurors in this case.
23 So I am somewhat -- you know, I don't know -- I don't know if
24 you all have thought about how many people in and around here
25 are tied to the community college system.

1 **MR. NEWMAN:** All right. If the Court has that
2 concern, it is very easy voir dire questions. Have you ever
3 attended a community college? Do you attend a community
4 college? Have you researched community colleges? And I would
5 suggest that the substantial majority, if not all, of the
6 potential jurors are going to say no, and the one that does
7 would be excluded. So voir dire would ferret that out.

8 I'm going to move on to the fees request. At the last
9 motion for preliminary injunction, PTK asked for relief that
10 would have prohibited these articles. The Court denied that
11 request and issued an order that is limited to very specific
12 survey questions. And why do I say very specific survey
13 questions? Because the Court's order says, if Honor Society is
14 going to send out other survey questions with the same subject
15 matter, Honor Society is not barred from doing so but must
16 advise PTK. It doesn't even give PTK a right to object. It
17 just says that Honor Society must advise PTK that it is sending
18 out other survey requests. So the order contemplates that
19 other survey requests might be sent out with the same subject
20 matter. And if other survey requests might be sent out with
21 the same subject matter, then I think it is fair to assume that
22 the order allows PTK -- excuse me, strike that -- Honor Society
23 to send out other communications that aren't surveys with the
24 same subject matter.

25 The request for fees for an alleged violation of the

1 spirit of the order denies due process. The spirit of the
2 order, there aren't cases that talk about that. The spirit of
3 the order is limited to the words of the order because a party
4 has to be put on notice as to what conduct it may and may not
5 engage in. It can't be left to guess as to what the Court left
6 out. It has to be specific.

7 I would suggest, based upon the case law that we cited,
8 that the Court can't fine a party for doing something that the
9 order doesn't prohibit, nor does this violate the spirit of the
10 order.

11 The subject matter that Honor Society is speaking about is
12 not in a survey question, and the order is very clear that it
13 is as to survey questions.

14 Fees that Courts issue are reserved for actual violations
15 of a Court order, and here there is no actual violation, not
16 even close. So I would suggest that a fee award would be
17 inappropriate.

18 Just to conclude, I think PTK is trying to use this
19 process to cover up matters that are legitimately of public
20 concern. And Honor Society has the legal right to discuss this
21 lawsuit, its allegations, and why it believes that PTK is
22 misleading colleges and students. And the Court should not
23 issue a prior restraint against Honor Society's speech. The
24 Court should allow discourse and debate on both sides and let
25 the freedom of speech in the marketplace reach the public.

1 Honor Society has made only true statements, nothing
2 misleading. And to the extent it is misleading, it's not
3 commercial speech, and it all complies with the First
4 Amendment. And I'm grateful for the Court's time. Thank you.

5 **THE COURT:** We are going to take a ten-minute break.
6 The court reporter needs a break. We'll come back in ten
7 minutes, and we will let you, Mr. Wallace, wrap up on the
8 rebuttal.

9 **(RECESS TAKEN AT 5:10 P.M. UNTIL 5:26 P.M.)**

10 **THE COURT:** Mr. Wallace.

11 **MR. WALLACE:** Your Honor, I know it's late. I
12 appreciate the Court's patience and effort in fitting this in,
13 and I will try to be brief, but I want to start with your
14 question about the ten percent. As I understand your question,
15 you were asking isn't it true that there is a factual dispute
16 about whether our ten percent statements are true or they are
17 not true. I think the answer is, yeah, there is a dispute.
18 But as you've already said, this is a preliminary injunction
19 hearing, and you're the fact-finder. You're the one who gets
20 to decide, for purposes of the preliminary injunction, whether
21 or not what we have been saying is true.

22 Now, when we get around to trying the case, that doesn't
23 foreclose the jury from reconsidering the same fact. They can
24 say, We don't owe you any damages because we were telling the
25 truth, that ten percent isn't true. But for purposes of this

1 preliminary injunction hearing, you are the finder of fact.
2 You have to think about the explanation of the numbers which
3 you heard from a woman who has been doing those numbers as a
4 college employee and as an employee and now president at Phi
5 Theta Kappa. She has been doing those for years, and she has
6 explained to you why the numbers make sense and why they are
7 true.

8 And you've heard about -- you've heard the criticism of
9 those numbers from somebody who is telling you what he thinks
10 he found out from some junior college in Illinois that he can't
11 authenticate. You are entitled to decide which one of those is
12 more likely to be true, and I think you ought to find that
13 Dr. Tincher-Ladner is telling the truth when she says that Phi
14 Theta Kappa represents the top ten percent of the junior
15 college community.

16 The other thing they have talked about is sale of data,
17 which is participation in the PTK Connect program, which puts
18 our members in touch with universities and in touch with
19 potential employers. And they say, for the first time, that
20 that is illegal under the false advertising laws because all
21 material information must be disclosed.

22 I have read the briefs. I don't think I've heard anything
23 about false advertising laws until he just stood up a minute
24 ago, so I don't know what law he thinks we have violated. And
25 I don't know how he thinks it would be material to the students

1 because you have read what we tell them. We tell them we are
2 going to share this information with people, with potential
3 employers and potential universities. We tell them that.

4 We tell them one other thing too. After you have signed
5 up, if you don't want to do that, you can opt out. You can
6 come back to us and say, I don't want you to do that. Now, if
7 you wanted to show it was material, you would ask a question
8 they have never asked, which is, how many of those people,
9 having been told about it, and having been told they can opt
10 out if they don't like it, how many of them come back and opt
11 out? But they haven't asked that question. If they did, I
12 think they would find out that who gets this information is not
13 material, to know their names. The general category is
14 material. It's universities and employers, and they are
15 perfectly happy to have us do it. We're not taking advantage
16 of our members in any way, shape or form.

17 He told you we have embezzled funds. The uncontradicted
18 evidence in this case is that the former advisor at Itawamba
19 College was appointed by Itawamba, not us, and that the money
20 she embezzled was not Phi Theta Kappa money. We didn't
21 embezzle anything. That is just a complete falsehood. And
22 they have told you that we misappropriated funds. Mr. Moradian
23 sat there and said his opinion was we had misappropriated
24 student dues. And I was waiting for him to tell us on what he
25 based that suspicion. Not a word. He had nothing to say about

1 it.

2 What he says in his papers, the ones up here -- well, they
3 are not papers. They are electrons. They're up there on the
4 internet. I don't know what you call them. But what he said
5 there was we paid a golden parachute to Rod Risley with
6 \$3 million of student dues. Now, that would be
7 misappropriation if Rod Risley wasn't entitled to it and if it
8 was all students dues. But the evidence we have talked about,
9 we had an earlier hearing, we have had it now, Mr. Risley was
10 paid past -- deferred compensation, to which he was entitled
11 for his service to Phi Theta Kappa. It came from all funds
12 available to Phi Theta Kappa, student dues, contributions,
13 program that we get funds for participating in.

14 The idea that we dipped into our students' pockets and
15 paid \$3 million we didn't owe to this man, if it's not a lie,
16 it's misleading. And indeed, I heard Mr. Newman concede that
17 some of the stuff up on the internet may be misleading. He
18 says it's not false, and you can't touch it if it's not false.
19 More importantly, that in a defamation action, you can't touch
20 it unless he knows it's false. That's not the standard for
21 actual malice, but if it were, we could meet it on the basis of
22 the testimony you have heard today.

23 The proof that we are lying about the ten percent is an
24 unauthenticated document that he got from a college in June.
25 He started lying about us on the internet in March. You have

1 already seen those documents. He started sending out those
2 questionnaires: Would you think less of Phi Theta Kappa if you
3 knew they were lying about being the top ten percent? He
4 literally shot first and asked questions later.

5 The standard for actual malice is not just you know it's
6 wrong. It's you don't care whether it is wrong or right.
7 That's the definition of actual malice. And if there is
8 anybody around that's any more actual malice, actually
9 malicious than Mr. Moradian, I don't know how you could find
10 him.

11 He also says that according to the Supreme Court, matters
12 of public interest are always protected, even in commercial
13 speech. I don't think that is right. I think you ought to go
14 back and look at the *Zauderer* case, which is in our brief. And
15 as I remember, *Zauderer* was a disciplinary action concerning a
16 solicitation by a lawyer in Ohio. And they said that his
17 solicitations were misleading. He tried to defend it on the
18 notion that in his solicitation, he had statements on matters
19 of public interest. It was public interest whether you ought
20 to get busy and sue these people, I guess. And the Supreme
21 Court says, that is all well and good, but you cannot excuse
22 misleading commercial speech just by putting some protected
23 political speech in there.

24 I think that's what *Zauderer* says, and I think you will
25 find out that his contention that the Supreme Court says all

1 political speech, even in a commercial context, is always
2 protected, I think that is going to turn out to be wrong.

3 He talks about the billboard case in Atlanta, the *National*
4 *Service Corporation* case, which tells you what happens when you
5 don't pay your bills to Ted Turner. Ted Turner ran -- I don't
6 even know if he is still alive, but among other things, he ran
7 a billboard business in Atlanta, and these people rented
8 billboards from him and they took bankruptcy. And what he put
9 up on his billboards were an overlay and said, These people
10 don't pay their bills.

11 Now, the Fifth Circuit said, that's not commercial speech.
12 Ted Turner is in the business of selling billboards. Putting
13 up a notice that these people don't pay their bills doesn't do
14 anything to help him rent billboards. And anyway, the two
15 things he said are absolutely, completely factually true. He
16 didn't pay his bills, and he did take bankruptcy. That case
17 has nothing to do with a case that is real political speech.

18 I will add that when the Fifth Circuit did the Ted Turner
19 case, the Supreme Court hadn't decided the *Bolger* case, and the
20 Fifth Circuit hadn't decided the *Procter & Gamble* case. So
21 whether Ted Turner would come out differently today, now that
22 we know what the law is, I don't know. But on the basis of it,
23 he had no commercial because he wasn't making any money on it.
24 He was just mad. And he told the truth, which even mad people
25 are entitled to do.

1 So I think you will find that this is commercial speech,
2 and I think you will find that if it is misleading or if it is
3 false, and I've gone through the facts with you, that the First
4 Amendment is no barrier.

5 He talks about the litigation privilege, and he says,
6 well, you did a press release and then you sent it to all the
7 colleges. There's no evidence that we've sent it to all the
8 colleges. I don't think we did. I wouldn't sit here and tell
9 you that nobody at Phi Theta Kappa had ever sent the press
10 release to anybody at one of our chapters. If somebody called
11 up, maybe they very well did. But we had a press release, and
12 if anybody asked us about it, we could refer them to the press
13 release. There is no evidence that we went around spreading it
14 so everybody in the world could see it.

15 What you have seen on their website looks very little like
16 our press release. And not only does it look very little like
17 our press release, they have arranged it in a way that they
18 drive people to find it. Your Honor knows that I do not
19 understand the internet, and I've never Googled myself and have
20 no desire to, but the evidence I've heard today is that they
21 have arranged it in such a way that if you ask Mr. Google to
22 tell you about Phi Theta Kappa and a junior college, what comes
23 up on the first page are all these cartoons and all these
24 misleading statements and all these lies. That's not what the
25 litigation privilege is about. The idea that all they are

1 doing is what you've already said we were justified in doing is
2 simply not true. The litigation proceeding doesn't happen
3 here.

4 And finally, whether we can prove our case, I'm astounded
5 to find out that I have to argue Article III standing today.
6 It's not in their brief. You told me on Monday I still don't
7 understand Article III standing, so we are going to go back and
8 look at it again. But what I understand about Article III
9 standing is to get into federal court, you have to allege, not
10 dump all your proof on the doorstep but allege that I can prove
11 that what I'm claiming about damaged or protected interests
12 that belong to me. That's the constitutional standard. And we
13 have alleged that.

14 We have said that at the end of the day, their malicious
15 intent to harm us has in fact harmed us. I know that
16 correlation is not causation. But at the preliminary
17 injunction stage, it's a pretty good start. If we prove they
18 intended to harm us and we prove we got harmed, then we are a
19 long way toward having established a substantial likelihood of
20 success on the merits. We have identified the students that
21 have quit. We have told you that our participation in PTK
22 Connect is down, and we told you that it never happened before.
23 Doesn't that at least raise some possibility that we will, at
24 the end of the day, be able to prove that these people have
25 left us because of what they started doing in March?

1 All we have to prove is a substantial likelihood. We have
2 given you the names of the people. I guess in all of this
3 discovery we are still doing, we will find out more about why
4 they did what they did. But for preliminary injunction
5 purposes, they set out to harm us, we have been harmed, and we
6 have told you the people that we think are the ones that have
7 quit doing business with us because of what they have intended
8 to do.

9 I think we have got a substantial likelihood of success on
10 the merits. You thought so in March. I think you were right.
11 That is why I think you ought to give us an extended
12 preliminary injunction on Counts 5 and 6 and tell them the
13 things they are now saying they have to stop saying.

14 If Your Honor has got any more questions, I will address
15 them, but otherwise, I think I am done.

16 **THE COURT:** Okay. I think one of the responses to
17 what the Court was asking earlier of Mr. Newman, he indicated
18 that speech that is solely based on one thing, or it must be
19 based solely on the -- exclusively or solely to the extent that
20 whatever speech they are doing is for the public good or for
21 some other reason, and it also happens to harm PTK, the Court
22 is restrained from finding that, you know, your claim is
23 meritorious. You understand the question?

24 **MR. WALLACE:** I do understand what you are saying.
25 And my answer to that is, I don't know of any case that says

1 commercial speech can't be restricted because some place in the
2 same document is something that would qualify as protected
3 political speech. My recollection of *Zauderer* is that the law
4 is to the contrary. You may be able to say the political
5 speech, but that doesn't give you a free ride on the commercial
6 speech. I think that's the law.

7 And again, I think it looks at the nature of the speech,
8 and it doesn't look all that much at what your intent is. Even
9 if you believe that somewhere in Mr. Moradian's heart he has
10 the public interest in mind, there's no doubt that the major
11 effort here is commercial. That's why he wants a bond. And
12 I -- you know, I think you can tell him, stop doing -- start
13 doing -- stop doing commercial attacks on PTK. If you want to
14 do the kind of press release that PTK did when they filed the
15 lawsuit, fine, you know. You can say what your claims are.
16 But going beyond that to do what he said he wanted to do -- he
17 wants to have an impact on people who are making decisions
18 about whether or not to do business with PTK. I don't think
19 the fact that he thinks that he has public interest at heart
20 gives him a license to go after our customers and potential
21 customers, which is what he admits he's doing.

22 **THE COURT:** And I guess the claim of PTK is that
23 Honor Society -- I guess it's the claim -- it's tortious
24 interference of contractual relations --

25 **MR. WALLACE:** That's our claim 5 and 6. Thank you,

1 Your Honor.

2 **THE COURT:** Thank you, Mr. Wallace. Counsel, the
3 Court is going to take this matter under advisement. I haven't
4 looked at the scheduling order in this matter. I know the
5 trial is set a year -- well, in June, so I'm counting backwards
6 in my mind. I presume discovery will be done by the end of
7 this year.

8 **MR. POLAK:** Correct. The discovery deadline is
9 December 15th or so. It's before Christmas. The next deadline
10 that is in the case is mid-August, which is the plaintiff or
11 counter-plaintiff's experts. Three days-ish later, the
12 defendant's experts are done, to be disclosed. But, yes,
13 ultimately the discovery deadline is then.

14 And I think Judge Myers has been very clear that there
15 will be no other extensions on discovery, barring some
16 extraordinary circumstances.

17 **THE COURT:** Okay. Well, I'm going to take this under
18 advisement. I do understand the importance of it and the
19 magnitude of it. It's a lot of information out there that
20 everybody agrees has been -- has been put out there and will
21 continue to be put out there, I think. I don't think there's
22 any -- I've not heard anybody say that we are going to stop
23 doing what we are doing, you know. So I understand the
24 magnitude of whether -- of what the Court does.

25 And we will try to get out something just as soon as we

1 can, just so that the parties will know how they should move
2 forward in this litigation. It's a hard fought case. I know
3 y'all have got motions and stuff before Magistrate Judge Myers.

4 Yes, I know the parties are spending a lot of money on
5 this because the parties believe that their respective
6 interests ought to be protected in some way, and people are
7 entitled to do that. So, you know, we will act as soon as we
8 can. And as soon as we can may not be as quick for some
9 persons, as quick for some, but hopefully we will be able to do it
10 expeditiously. I'll put it that way.

11 Thank you all for bearing with me, and we will hopefully
12 get something out in due course. That's all I have. Thank
13 you.

14 Have a good rest of the day. We are now adjourned. And
15 if you want to leave anything here until tomorrow for others to
16 pick up, you may do so. We just have a hearing -- some
17 criminal hearings tomorrow or something. But there is
18 plenty -- if you've got to get out and have others to come back
19 and get your stuff, that is fine.

20 **MR. WALLACE:** We may do that.

21 **THE COURT:** That is fine. We will be here all day
22 tomorrow, at least I will.

23 (HEARING CONCLUDED)
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3 CERTIFICATE OF COURT REPORTER
4

5 I, Teri B. Norton, RMR, FCRR, RDR, Official Court
6 Reporter for the United States District Court for the Southern
7 District of Mississippi, appointed pursuant to the provisions
8 of Title 28, United States Code, Section 753, do hereby certify
9 that the foregoing is a correct transcript of the proceedings
10 reported by me using the stenotype reporting method in
11 conjunction with computer-aided transcription, and that same is
12 a true and correct transcript to the best of my ability and
13 understanding.

14 I further certify that the transcript fees and format
15 comply with those prescribed by the Court and the Judicial
16 Conference of the United States.

17
18
19
20 *S/ Teri B. Norton*
21 TERI B. NORTON, RMR, FCRR, RDR
22 OFFICIAL COURT REPORTER
23
24
25

EXHIBIT A-6



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August 19, 2024

VIA EMAIL

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Re: *Phi Theta Kappa Honor Society, et al. v. HonorSociety.Org., et al.*

Dear Counsel:

We are advised that your client continues to distribute the “Community College Survey” that was the subject of the Preliminary Injunction. You represented to the Court at the hearing on the injunction motion as follows (Trans. P. 98:22-25; 99:1-10):

The Court: But you’ve agreed to not send out anymore –

Mr. Newman: And the reason why is because Honor Society *sent a onetime survey* out. It sends lots of surveys out, has for its entire business. Sends a *onetime survey* to a lot of people, gets responses, and then is done. It doesn’t need to send the survey again. So by the time we contacted Honor Society and asked about the survey, because we learned about it from counsel, we were told, like, yeah, we sent that survey out. *And we’re not going to send out another one, because*

Derek Linke
Derek Newman
Whit Rayner
Dakota Stephens
August 19, 2024
Page 2

we have all the information that we need. So in the declaration of Mike Moradian, he indicates that those survey questions will not be sent out again.

And you continued later in the argument, when asked whether the information sought in the survey was related to this litigation (Id., p. 100:10-16):

Mr. Newman: I think it is entirely possible that Honor Society sent those questions after learning information in depositions that weren't protected as confidential or attorneys eyes only, so that might have spurred that survey. But the survey *was a onetime deal* as many of their surveys are. They received the results form that survey; *they are done*.

We are concerned that the continued use of the survey by your client is inconsistent with your representations to the Court. Please advise by no later than Thursday, August 22, 2024, the following:

1. How the continued use of this survey is not inconsistent with your representations to the Court;
2. Why we have not been produced the surveys or their results; and
3. Whether we can have the documents related to these continued surveys (and collected responses) produced to us by Friday, August 23, 2024.

We reserve all rights in connection with these surveys.

Very truly yours,



Jonathan G. Polak

JGP/dac

cc: Daniel Rozansky (via email)
Michael Bernet (via email)
Rachel Smoot (via email)
Mike Etienne (via email)
Mike Wallace (via email)
Beau Bettiga (via email)
Charles Cowan (via email)
Jennifer Salva-Cushing (via email)
Kristine Callahan (via email)
Hugh Warren (via email)

EXHIBIT A-7



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SENT BY EMAIL

August 30, 2024

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**Re: *Phi Theta Kappa v. HonorSociety.Org., Inc.*, No. 22-cv-00208-CWR-RPM
PTK's August 19, 2024 Letter regarding Community College Surveys**

Jonathan:

We received your August 19, 2024 letter questioning whether HonorSociety's recent surveys comport with HonorSociety's representations to the Court and the Court's March 28 preliminary injunction. They do.

On March 18, PTK filed a motion for preliminary-injunctive relief based, in part, on allegations that HonorSociety had distributed a survey with specific questions that PTK believes were misleading.¹ In response, HonorSociety filed a declaration by its executive director stating that the specific survey questions at issue in PTK's motion were only included in HonorSociety's survey from March 6 through March 11.² In other words, by the time PTK filed its motion, HonorSociety had already stopped including those questions. Mr. Moradian's declaration also represented that HonorSociety would not use those questions in future surveys.³

At the March 27 hearing on PTK's motion, I informed the Court that, although HonorSociety had relied on surveys since its inception, the particular survey at issue in PTK's motion was a one-time event that had already ended and which it had no plans to use again:⁴

The Court: Now, if I understand what I've been told through the papers, Honor Society has agreed to stop *those questions*

Mr. Newman: Yes, Your Honor, and the Court could find that in Mike Moradian's declaration

¹ See Dkt. Nos. 116, 117.

² Declaration of Michael Moradian, Dkt. No. 120-1, at ¶ 55.

³ *Id.* ¶ 56.

⁴ Hrg. Tr. at 98:8–99:10, Mar. 27, 2024 (emphasis added).

Phi Theta Kappa v. HonorSociety.Org, Inc.

August 30, 2024

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The Court: But you've agreed to not send out anymore –

Mr. Newman: And the reason why is because Honor Society sent a onetime survey out. It sends lots of surveys out, has for its entire business. Sends a onetime survey to a lot of people, gets responses, and then is done. It doesn't need to send *the* survey again. ...

So in the declaration of Mike Moradian, he indicates that *those survey questions* will not be sent out again.

At no point did either HonorSociety or I represent to the Court that HonorSociety would not send other surveys or other survey questions.

On March 28, the Court issued a preliminary injunction requiring that HonorSociety not send the six specific survey questions at issue in PTK's motion and that it "provide PTK with reasonable advance notice should Honor Society desire to use similar but reworded questions in future surveys."⁵ The order did not prevent HonorSociety from sending other surveys. To the contrary, it expressly contemplates that HonorSociety would send "future surveys" for which it HonorSociety is required to "provide PTK with reasonable advance notice should it desire to use similar but reworded questions" again.⁶

Consistent with the order, HonorSociety has not asked those six questions or "similar but reworded questions" in any survey since the March 6–11 survey ended. HonorSociety's representations to the Court that it was done sending those survey questions in that onetime survey were accurate and truthful. If PTK believes that HonorSociety violated the order, please advise which prohibited survey questions HonorSociety has sent since the March 27, 2024 hearing and what evidence PTK has to support that allegation.

The recent surveys HonorSociety produced in discovery are consistent with representations to the Court that HonorSociety sends "lots of surveys out, has for its entire business."⁷ The Court understood that "Honor Society has agreed to stop *those questions*...."⁸ And I confirmed that HonorSociety's declaration committed that: "*those survey questions* will not be sent out again."⁹ PTK's motion did not seek to prevent HonorSociety from sending all surveys. HonorSociety never represented to the Court that it would cease sending all surveys. The Court did not order HonorSociety to do so.

Your letter also demands that HonorSociety advise as to why PTK has "not been produced the surveys or their results." As we advised in our August 28, 2024 letter, if PTK agrees to supplement

⁵ Dkt. No. 130, at 5–6.

⁶ *Id.*

⁷ Hrg. Tr. 98:25–96:1, Mar. 27, 2024.

⁸ *Id.* at 98:9–10 (emphasis added).

⁹ *Id.* at 99:8–10 (emphasis added).

Phi Theta Kappa v. HonorSociety.Org, Inc.

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Page 3 of 3

its responses to HonorSociety's document requests within 30 days after coming into possession of responsive documents, HonorSociety will make the same commitment moving forward, including with regard to any responsive surveys.

Thank you.

NEWMAN LLP

A handwritten signature in black ink, consisting of a stylized 'D' and 'N' followed by a horizontal line.

Derek A. Newman

EXHIBIT A-8

Date	Name	Description	Orig Hrs	Orig Amt	Orig Rate	Rev Hrs	Rev Amt	Invoice	Status	Narrative
08/23/2024	Peluchette, Neil R.	Associate	0.60	252.00	420.00	0.60	252.00	6431362	Billed	Review of Court order; email correspondence with J. Polak regarding same; review of Wikipedia page.
08/23/2024	Polak, Jonathan G.	Partner	0.50	412.50	825.00	0.50	412.50	6431362	Billed	Review updates to Honor Society website; consider same in context of text of order; exchange emails with Lynn Tincher-Ladner regarding same.
08/23/2024	Polak, Jonathan G.	Partner	0.50	412.50	825.00	0.50	412.50	6431362	Billed	Conference with Mike Wallace regarding status issues related to TRO and possible need to enforce.
08/23/2024	Sears, Hayley A.	Associate	3.20	1,200.00	375.00	1.60	600.00	6431362	Billed	Conduct research regarding causal connection and send research to J. Polak and read court's preliminary injunction order.
08/24/2024	Polak, Jonathan G.	Partner	1.10	907.50	825.00	1.10	907.50	6431362	Billed	Review Honor Society and Honor Society Foundation websites for compliance with injunction; exchange emails with co-counsel regarding same.
08/24/2024	Smoot, Rachel A.	Associate	0.40	188.00	470.00	0.40	188.00	6431362	Billed	Review and analyze Defendants' publicly available posts referencing PTK in light of injunction order; confer with co-counsel regarding same.
08/26/2024	Etienne, William M.	Associate	5.80	2,697.00	465.00	5.80	2,697.00	6431362	Billed	Discuss strategy underlying Motion to Show Cause regarding Contempt of Court; gather evidence regarding same and review case law regarding same.
08/26/2024	Polak, Jonathan G.	Partner	1.10	907.50	825.00	1.10	907.50	6431362	Billed	Attention to injunction compliance; review present status of HS.org and HSF websites; conference with Mike Etienne regarding same; review draft email on contempt from Mike Etienne; exchange communications with client regarding same.
08/26/2024	Polak, Jonathan G.	Partner	0.40	330.00	825.00	0.40	330.00	6431362	Billed	Receive and review email from D. Newman regarding request for consent to stay injunction; prepare email to D. Newman regarding same; review file materials for same; exchange further communications from D. Newman regarding same.
08/26/2024	Sears, Hayley A.	Associate	5.50	2,062.50	375.00	3.50	1,312.50	6431362	Billed	Work on motion for contempt and sanctions, call with Mike and Rachel, and research and outline.
08/27/2024	Etienne, William M.	Associate	7.60	3,534.00	465.00	7.60	3,534.00	6431362	Billed	Prepare initial draft of Memorandum in support of Motion for Contempt and Sanctions.
08/27/2024	Polak, Jonathan G.	Partner	0.50	412.50	825.00	0.50	412.50	6431362	Billed	Receive and review letter from counsel addressing identified issues of contempt; consider same and provide instructions and guidance in connection with same.
08/27/2024	Polak, Jonathan G.	Partner	1.00	825.00	825.00	1.00	825.00	6431362	Billed	Review and continue work on motion for contempt; prepare email to Mike Etienne regarding same.
08/27/2024	Sears, Hayley A.	Associate	0.10	37.50	375.00	0.10	37.50	6431362	Billed	Check-in with Mike and Rachel on motion for contempt and sanctions and discuss recent HS filing.
08/27/2024	Smoot, Rachel A.	Associate	4.50	2,115.00	470.00	4.50	2,115.00	6431362	Billed	Review and analyze publicly available Honor Society webpages for compliance with Preliminary Injunction; draft Motion for Contempt and Declaration of W. Etienne in support of same; confer with co-counsel regarding same; attention to correspondence from opposing counsel regarding contempt; confer with co-counsel regarding same; multiple emails with client regarding Defendants' compliance with Preliminary Injunction.
08/27/2024	Smoot, Rachel A.	Associate	1.30	611.00	470.00	1.30	611.00	6431362	Billed	Review and analyze Motion to Stay Preliminary Injunction and supporting documents; confer with co-counsel regarding same.
08/28/2024	Etienne, William M.	Associate	8.10	3,766.50	465.00	8.10	3,766.50	6431362	Billed	Prepare revised version of Memorandum in support of Motion for Contempt and Sanctions based on comments; review and cite additional case law in furtherance of same; conduct additional investigations in HS conduct in furtherance of same.
08/28/2024	Polak, Jonathan G.	Partner	4.10	3,382.50	825.00	4.10	3,382.50	6431362	Billed	Attention to injunction enforcement; work on motion for contempt; conference with Mike Etienne to review various HS.org and HSF websites and social media for compliance and issues to raise in contempt motion; review and respond to emails from client on same; continue work on brief in support of motion for contempt; circulate same for comment with revisions.
08/28/2024	Rose, Alexis	Paralegal	2.30	644.00	280.00	2.30	644.00	6431362	Billed	Discuss motion and exhibits with Mike Etienne, take page vaults and exhibits still needed to prepare for filing.
08/28/2024	Sears, Hayley A.	Associate	0.60	225.00	375.00	0.60	225.00	6431362	Billed	Review HS motion for stay.
08/28/2024	Smoot, Rachel A.	Associate	3.30	1,551.00	470.00	3.30	1,551.00	6431362	Billed	Draft Motion for Contempt; revise and edit Memorandum in Support of Same; confer with co-counsel regarding same; revise and edit Declaration of W. Michael Etienne in support of same; revise and edit Memorandum in Support of same.
08/29/2024	Etienne, William M.	Associate	11.50	5,347.50	465.00	11.50	5,347.50	6431362	Billed	Revise Memorandum in Support of Motion for Contempt and Sanctions in view of additional comments; revise Motion; revise Etienne Declaration in support of same; obtain and review Exhibits 1-55 in support of same; manage filing of same.
08/29/2024	Polak, Jonathan G.	Partner	0.80	660.00	825.00	0.80	660.00	6431362	Billed	Continue work on motion for contempt; communicate with co-counsel regarding same.
08/29/2024	Smoot, Rachel A.	Associate	0.60	282.00	470.00	0.60	282.00	6431362	Billed	Multiple emails with co-counsel regarding Motion for Contempt; call with M. Etienne regarding same.
09/04/2024	Polak, Jonathan G.	Partner	0.20	165.00	825.00	0.20	165.00	0	Unbilled	Exchange emails with C. Cowan regarding status of response to motion to stay injunction.
09/06/2024	Polak, Jonathan G.	Partner	1.10	907.50	825.00	1.10	907.50	0	Unbilled	Review draft response in Opposition to Motion to Stay; prepare email to C. Cowan regarding same and with comments; prepare email to Lynn Tincher-Ladner regarding same; multiple emails to co-counsel regarding same.
09/06/2024	Smoot, Rachel A.	Associate	3.40	1,598.00	470.00	3.40	1,598.00	0	Unbilled	Revise and edit Memorandum in Support of Response in Opposition to Defendants' Motion to Stay Preliminary Injunction and Appeal; draft Smoot Declaration in support of same; draft Tincher-Ladner Declaration in support of same; email client for potential exhibits and attention to response; finalize exhibits for Declarations; revise and edit Declarations; multiple emails and calls with local counsel regarding finalization.
09/06/2024	Smoot, Rachel A.	Associate	1.00	470.00	470.00	1.00	470.00	0	Unbilled	Draft Motion to Seal; multiple emails with co-counsel and opposing counsel regarding same.
09/09/2024	Polak, Jonathan G.	Partner	0.20	165.00	825.00	0.20	165.00	0	Unbilled	Consider need to seek court hearing on contempt motion; exchange emails with co-counsel regarding same.
09/11/2024	Polak, Jonathan G.	Partner	0.50	412.50	825.00	0.50	412.50	0	Unbilled	Review recent communications over discovery disputes; prepare list of outstanding issues; prepare email to co-counsel regarding same along with strategy for presentation to Magistrate Judge Myers.
09/13/2024	Polak, Jonathan G.	Partner	0.50	412.50	825.00	0.50	412.50	0	Unbilled	Preliminary review of response to motion for contempt; review email exchanges with co-counsel regarding strategy for responding to same.
09/13/2024	Smoot, Rachel A.	Associate	2.80	1,316.00	470.00	2.80	1,316.00	0	Unbilled	Review and analyze Response in Opposition to Motion for Contempt; draft Reply Brief.
09/14/2024	Polak, Jonathan G.	Partner	1.20	990.00	825.00	1.20	990.00	0	Unbilled	Prepare draft email to court on outstanding discovery issues; review file materials for same; circulate for comment with co-counsel; receive same; prepare final email to court.
09/14/2024	Smoot, Rachel A.	Associate	3.10	1,457.00	470.00	3.10	1,457.00	0	Unbilled	Continue to draft Reply in Support of Motion for Contempt.
09/15/2024	Smoot, Rachel A.	Associate	3.50	1,645.00	470.00	3.50	1,645.00	0	Unbilled	Continue to draft Reply in Support of Motion for Contempt.
09/16/2024	Etienne, William M.	Associate	0.80	372.00	465.00	0.80	372.00	0	Unbilled	Review HS Response to PTK's Motion for Contempt.
09/16/2024	Etienne, William M.	Associate	5.80	2,697.00	465.00	5.80	2,697.00	0	Unbilled	Review HS and HSF websites to determine whether Defendants have now complied with the Court's Second Preliminary Injunction Order; prepare outline and exhibits for Reply brief for Contempt Motion citing failures to comply with same.
09/16/2024	Etienne, William M.	Associate	1.60	744.00	465.00	1.60	744.00	0	Unbilled	Review case law regarding civil motion for contempt where attorneys fees were granted merely from having to file the motion.
09/16/2024	Polak, Jonathan G.	Partner	0.90	742.50	825.00	0.90	742.50	0	Unbilled	Review draft reply in support of motion for contempt; review file documents for same; prepare revisions to reply brief; conference with Mike Etienne regarding comments to same.
09/16/2024	Polak, Jonathan G.	Partner	0.50	412.50	825.00	0.50	412.50	0	Unbilled	Receive communication from court on hearing; receive communication from D. Linke regarding hearing; prepare for court hearing.
09/16/2024	Rose, Alexis	Paralegal	0.30	84.00	280.00	0.30	84.00	0	Unbilled	Discussion with M. Etienne regarding page vaults and captures needed for Thursday's filing.
09/16/2024	Rose, Alexis	Paralegal	0.60	168.00	280.00	0.60	168.00	0	Unbilled	Capture page vaults and snap shots for Thursday's filing.

Date	Name	Description	Orig Hrs	Orig Amt	Orig Rate	Rev Hrs	Rev Amt Invoice	Status	Narrative
09/17/2024	Etienne, William M.	Associate	1.10	511.50	465.00	1.10	511.50 0	Unbilled	Investigate 2500 AI-generated articles revised since Second Preliminary Injunction Order and stored on HS Foundation website; coordinate PageVault evidentiary capture of same.
09/17/2024	Etienne, William M.	Associate	8.30	3,859.50	465.00	8.30	3,859.50 0	Unbilled	Prepare revised version of Reply brief in support of PTK's Motion to compel; continue to review and incorporate Fifth Circuit case law regarding same.
09/17/2024	Fereshtenkhou, Hannah S.	Associate	1.30	487.50	375.00	1.30	487.50 0	Unbilled	Research and analyze Fifth Circuit case law regarding motion for contempt, including instances of finding contempt when party complied only after filing of motion for contempt.
09/17/2024	Polak, Jonathan G.	Partner	3.40	2,805.00	825.00	3.40	2,805.00 0	Unbilled	Receive and review communication from D. Linke to Court on issues raised by PTK with court; consider same in preparation for conference with Magistrate Judge Myers; attend conference.
09/17/2024	Polak, Jonathan G.	Partner	0.90	742.50	825.00	0.90	742.50 0	Unbilled	Continue work on reply to motion for contempt; conference with Mike Etienne regarding same; prepare email to co-counsel with draft and comments.
09/17/2024	Rose, Alexis	Paralegal	3.50	980.00	280.00	3.50	980.00 0	Unbilled	Prepare and organize exhibits for reply in support of motion for contempt, review exhibits, finalize for filing.
09/17/2024	Smoot, Rachel A.	Associate	1.80	846.00	470.00	1.80	846.00 0	Unbilled	Prepare for and attend status conference with Magistrate.
09/18/2024	Etienne, William M.	Associate	0.90	418.50	465.00	0.90	418.50 0	Unbilled	Prepare motion to file additional pages in connection with Reply in support of Motion for Contempt and Sanctions.
09/18/2024	Etienne, William M.	Associate	3.60	1,674.00	465.00	3.60	1,674.00 0	Unbilled	Revise Reply in support of Motion for Contempt and Sanctions based on comments and edits.
09/18/2024	Etienne, William M.	Associate	4.60	2,139.00	465.00	4.60	2,139.00 0	Unbilled	Prepare and revise Etienne Declaration in support of Reply in support of Motion for Contempt and Sanctions.
09/19/2024	Etienne, William M.	Associate	3.20	1,488.00	465.00	3.20	1,488.00 0	Unbilled	Review proposed edits and revise Reply in support of Motion for Contempt and Sanctions, Declaration and Exhibits, and Motion for Excess Pages; correspond with opposing counsel regarding non-opposition of Motion for Excess Pages.
09/19/2024	Fereshtenkhou, Hannah S.	Associate	1.00	375.00	375.00	1.00	375.00 0	Unbilled	Research and analyze Fifth Circuit case law regarding hearing requirement for civil contempt.
09/19/2024	Polak, Jonathan G.	Partner	0.80	660.00	825.00	0.80	660.00 0	Unbilled	Continue work on reply to motion for contempt; review revised declaration from Mike Etienne; exchange emails with Mike Etienne regarding same.
09/19/2024	Smoot, Rachel A.	Associate	0.20	94.00	470.00	0.20	94.00 0	Unbilled	Attention to Reply Brief in Support of Motion for Sanctions.
09/24/2024	Etienne, William M.	Associate	1.20	558.00	465.00	1.20	558.00 0	Unbilled	Outline motion and review related caselaw for attorneys' fees related to PTK's first injunction proceeding, second injunction proceeding, motion for contempt.
Totals:			129.20	65,160.00		125.60	63,810.00		

EXHIBIT A-9

Time Report

Phi Theta Kappa Society / Trademark Infringement

Date	Name	Description	Orig Hrs	Orig Amt	Orig Rate	Rev Hrs	Rev Amt	Narrative
09/14/2024	Polak, Jonathan G.	Partner	1.20	990.00	825.00	1.20	990.00	Continue work on fee motion; exchange emails with Rachel Smoot regarding same.
09/14/2024	Smoot, Rachel A.	Associate	0.10	47.00	470.00	0.10	47.00	Attention to email from co-counsel regarding motion for fees. Discuss PTK fee application; review draft and comments regarding same.
09/23/2024	Etienne, William M.	Associate	0.90	418.50	465.00	0.90	418.50	
09/23/2024	Smoot, Rachel A.	Associate	0.30	141.00	470.00	0.30	141.00	Confer with co-counsel regarding Motion for Attorney Fees. Outline motion and review related caselaw for attorneys' fees related to PTK's first injunction proceeding, second injunction proceeding, motion for contempt.
09/24/2024	Etienne, William M.	Associate	3.30	1,534.50	465.00	3.30	1,534.50	Review task list of pending matter in this litigation and update with additional items.
09/24/2024	Etienne, William M.	Associate	0.20	93.00	465.00	0.20	93.00	
09/25/2024	Etienne, William M.	Associate	0.80	372.00	465.00	0.80	372.00	Discuss motion for fees; revise outline regarding same. Research and analyze case law regarding awarding attorneys' fees based on court's inherent power, contempt, and section 1927.
09/26/2024	Fereshtenkhov, Hannah S.	Associate	3.60	1,350.00	375.00	3.60	1,350.00	
09/26/2024	Polak, Jonathan G.	Partner	0.40	330.00	825.00	0.40	330.00	Continue work on motion for fees; review file documents for same and identify possible exhibits.
09/27/2024	Etienne, William M.	Associate	5.80	2,697.00	465.00	5.80	2,697.00	Review Taft's fees March - September 2024 to calculate total attorneys' that Honor Society should pay to PTK based on the first preliminary injunction work; create exhibit for Fee Motion based on same.
09/27/2024	Fereshtenkhov, Hannah S.	Associate	3.00	1,125.00	375.00	3.00	1,125.00	Continue researching and analyzing case law regarding awarding attorneys' fees based on courts' inherent power, contempt, and section 1927; review and analyze case law regarding lodestar method for calculating reasonable attorneys' fees.
09/27/2024	Smoot, Rachel A.	Associate	5.80	2,726.00	470.00	5.80	2,726.00	Breakdown and calculate fees for Motion for Contempt; confer with co-counsel regarding same.
09/28/2024	Etienne, William M.	Associate	1.00	465.00	465.00	1.00	465.00	Review Taft's fees March - September 2024 to calculate total attorneys' that Honor Society should pay to PTK based on the contempt motion work; create exhibit for Fee Motion based on same.
09/28/2024	Smoot, Rachel A.	Associate	0.20	94.00	470.00	0.20	94.00	Email to co-counsel regarding Motion for Fees. Continue researching and analyzing Fifth Circuit and Southern District of Mississippi case law regarding calculation of attorneys' fees through the lodestar method and Johnson factors.
09/29/2024	Fereshtenkhov, Hannah S.	Associate	2.00	750.00	375.00	2.00	750.00	
09/29/2024	Polak, Jonathan G.	Partner	0.40	330.00	825.00	0.40	330.00	Continue work on fee application. Confer with co-counsel regarding Motion for Fees; calculate fees in connection with Motion for Contempt and First Motion for Temporary Restraining Order.
09/29/2024	Smoot, Rachel A.	Associate	3.00	1,410.00	470.00	3.00	1,410.00	Prepare revised draft of motion for fees based on First Preliminary Injunction Order.
09/30/2024	Etienne, William M.	Associate	5.40	2,511.00	465.00	5.40	2,511.00	Draft Declaration of Jonathan Polak in Support of Motion for Attorney Fees.
09/30/2024	Smoot, Rachel A.	Associate	2.00	940.00	470.00	2.00	940.00	
			39.40	18,324.00		39.40	18,324.00	

EXHIBIT A-10

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION**

PHI THETA KAPPA HONOR SOCIETY,)	
)	
Plaintiff/Counter-Defendant)	Civil Action No. 3:22-cv-00208-CWR-
)	RPM
v.)	
)	
HONORSOCIETY.ORG, INC.,)	
)	
Defendant/Counter-Plaintiff)	
/Third-Party-Plaintiff)	
)	
HONOR SOCIETY FOUNDATION, INC.,)	
)	
Defendant)	
)	
-----)	
)	
HONORSOCIETY.ORG, INC.,)	
)	
Defendant/Counter-Plaintiff)	
/Third-Party-Plaintiff)	
)	
v.)	
)	
DR. LYNN TINCHER-LADNER,)	
)	
Third-Party Defendant)	

**PHI THETA KAPPA HONOR SOCIETY’S
NOTICE OF FIRST RULE 30(B)(6) DEPOSITION
TO HONORSOCIETY.ORG, INC.**

Please take notice that under Rule 30(b)(6) of the Federal Rules of Civil Procedure, counsel for Plaintiff/Counter-Defendant, Phi Theta Kappa Honor Society (“PTK”) will take the videotaped deposition of Defendant/Counter-Plaintiff HonorSociety.Org, Inc. (“Honor Society”) through remote means on August 28, 2024 at 9:00 am Pacific Time. The deposition will take place before a certified shorthand reporter and notary public or other person duly authorized to administer oaths,

and may be recorded by audio, audiovisual, or stenographic means and will continue day-to-day until completed.

Pursuant to Fed. R. Civ. P. 30(b)(6), Honor Society must designate one or more officers, directors, managing agents or other persons who will testify on its behalf as to the matters known or reasonably available to it concerning the subject matters set forth in Schedule B. Please provide that designation no later than two (2) business days prior to the date of the deposition of any designee. The deponent(s) is also required to prepare to testify under the standard set forth in Rule 30(b)(6).

PTK intends to utilize Rule 30(b)(6) for other depositions on other substantive issues in the case. This deposition notice is pursuant to the Court's order that it be taken. (ECF No. 230.) PTK reserves the right to issue further and additional notices for deposition under Rule 30(b)(6) in the future.

Dated this 22nd day of August 2024

Respectfully submitted,

/s/ Jonathan G. Polak

Jonathan G. Polak (Pro Hac Vice)
W. Michael Etienne (Pro Hac Vice)
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/s/ Charles E. Cowan

Michael B. Wallace, MSB # 6904
Charles E. Cowan, MSB # 104478
Beau M. Bettiga, MSB #105905
WISE CARTER CHILD & CARAWAY, P.A.
Post Office Box 651
Jackson, Mississippi 39205
Phone 601-968-5500

Counsel for Plaintiff

SCHEDULE A

Definitions and Instructions

1. “Honor Society,” “You,” and/or “Your” shall mean Defendant HonorSociety.org, Inc. and any of its parents, subsidiaries, divisions, affiliates, attorneys, related companies, predecessors, successors, assigns, officers, directors, employees, agents and representatives, and all other persons acting or purporting to act on their behalf or at their direction or control.

2. “Moradian” shall mean Michael Moradian.

3. “Plaintiff” and “PTK” shall mean Plaintiff Phi Theta Kappa Honor Society and any of its parents, subsidiaries, divisions, affiliates, attorneys, related companies, predecessors, successors, assigns, officers, directors, employees, agents and representatives, and all other persons acting or purporting to act on their behalf or at their direction or control.

4. “Asari” shall mean David Asari, and anyone acting on his behalf or at his direction.

5. “Person” or “Party” means the singular and plural of natural person, corporation, company, proprietorship, partnership, joint venture, association, firm, government entity, or any other entity recognized in law, and shall include the owners, officers, directors, agents, trustees, parents, subsidiaries, affiliates, assignees, predecessors, and successors of each such “Person” or “Party.”

6. The connectives “and” and “or” shall be construed either disjunctively or conjunctively as necessary to bring within the scope of these requests all responses that might otherwise be construed as outside of its scope.

7. The use of the singular form of any word includes the plural and vice versa, and the use of the past tense includes the present tense, and vice versa, as necessary to bring within the scope of these requests all responses that might otherwise be construed as outside of its scope.

SCHEDULE B

Deposition Topics

1. Your knowledge of any additions, deletions, revisions, or any other edits made to PTK's Wikipedia page.
2. The facts and circumstances of any additions, deletions, revisions, or any other edits made by You, Moradian, Asari, or any affiliate, employee, independent contractor or Person acting on Your behalf to PTK's Wikipedia page.
3. Whether anyone associated with You is associated with or has otherwise used or accessed the handle "WikiObjectivity."

CERTIFICATE OF SERVICE

I, Rachel Smoot, do hereby certify that a copy of the foregoing was served via electronic email to the following counsel of record on August 22, 2024:

W. Whitaker Rayner
Dakota J. Stephens
Hugh A. Warren
Kristine Lynn Callahan
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/s/ Rachel Smoot
Rachel Smoot

EXHIBIT A-11

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION

PHI THETA KAPPA HONOR)
SOCIETY,)
)
)
Plaintiff/Counter-Defendant,)
) CASE NO.
vs.) 3:22-CV-00208-
) CWR-RPM
HONORSOCIETY.ORG, INC.,)
)
)
Defendant/Counter-Plaintiff.)
/Third-Party-Plaintiff)
)
HONOR SOCIETY FOUNDATION, INC.,)
)
Defendant.)
)
-----)
)
HONORSOCIETY.ORG, INC.,)
)
Defendant/Counter-Plaintiff)
/Third-Party-Plaintiff)
)
v.)
)
DR. LYNN TINCHER-LADNER,)
)
Third-Party Defendant.)
-----)

VIDEOTAPED REMOTE DEPOSITION OF MICHAEL MORADIAN
TUESDAY, OCTOBER 1, 2024
Stenographically Reported by:
Katie L. Langgle, CSR No. 8637, CRR; CCR NO. 993

Pages 1 through 270

Page 2

1 JOB NO. MW 6946296

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1 Deposition of MICHAEL MORADIAN, taken on
2 behalf of Plaintiff using virtual technology,
3 commencing at 10:39 a.m., on October 1, 2024, before
4 Katie L. Langgle, CSR No. 8637; CCR No. 993

5
6 A P P E A R A N C E S:

7
8 For the Plaintiff/Counter-Defendant:

9 TAFT STETTINIUS & HOLLISTER LLP
Jonathan G. Polak, Esq. - Pro Hac Vice
10 Rachel Smoot, Esq.
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11 Indianapolis, Indiana 46204-2023
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12 317.713.3500

13 WISE CARTER CHILD & CARAWAY, P.A.

14 Charles E. Cowan, Esq.
Post Office Box 651
15 Jackson, Mississippi 39205
cec@wisecarter.com
16 601.968.5500
17
18

19 For the Defendant/Counter-Plaintiff/Third-Party
Plaintiff:

20 NEWMAN, LLP

21 Derek Linke, Esq.
22 100 Wilshire Boulevard, Suite 700
Santa Monica, California 90401-3602
23 linke@newmanlaw.com
206.274.2800
24
25

1 JONES WALKER, LLP - JACKSON

2 Dakota J. Stephens, Esq.

3100 North State Street, Suite 300

3 Jackson, Mississippi 39216

dstephens@joneswalker.com

4 601.949.4720

5
6 ALSO PRESENT: Brandon Miller - Videographer; Lynn
Tincher-Ladner; Nader Moradian

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I N D E X
E X A M I N A T I O N S

	PAGE
MICHAEL MORADIAN	
By Mr. Polak	8

E X H I B I T S

EXHIBIT	DESCRIPTION	PAGE
Exhibit 378	Deposition notice	15
Exhibit 379	Wikimedia Foundation universal code of conduct page	94
Exhibit 380	Phi Theta Kappa Difference Between Revisions	106
Exhibit 381	A capture of an internet site on Wednesday, July 24	148
Exhibit 382	Order on the second injunction	157
Exhibit 383	Comparison of revisions	165

1 VIA VIDEOCONFERENCE;

2 TUESDAY, OCTOBER 1, 2024;

3 10:39 A.M.

4 -0o0-

5 VIDEOGRAPHER: Good morning. We're going on
6 the record at 10:39 a.m. Pacific Daylight Time on
7 October 1st, 2024.

8 Please note that this deposition is being
9 conducted virtually. Quality of recording depends on
10 the quality of camera, internet connection of
11 participants. What is seen from the witness and heard
12 on screen is what will be recorded.

13 Audio and video recording will continue to take
14 place unless all parties agree to go off the record.

15 This is Media Unit No. 1 of the video-recorded
16 deposition of Michael Moradian taken by counsel for
17 plaintiff in the matter of Phi Theta Kappa Honor Society
18 versus HonorSociety.org, Incorporated, et al., filed in
19 United States District Court, Southern District of
20 Mississippi Northern Division.

21 Civil Action No. 3: 22-cv-00208-CWR-RPM.

22 This deposition is being conducted remotely
23 using virtual technology.

24 My name is Brandon Miller representing Veritext
25 Legal Solutions, and I'm the videographer.

1 The court reporter is Katie Langgle from the
2 firm Veritext Legal Solutions.

3 I'm not related to any party in this action,
4 nor am I interested in the outcome.

5 If there are any objections proceeding, please
6 state them at the time of your appearance.

7 Counsel and all present including remotely will
8 now state their appearances and affiliations for the
9 record beginning with noticing attorney and the witness
10 to be sworn in.

11 Thank you.

12 MR. POLAK: Jonathan Polak, Taft Stettinius &
13 Hollister, represent the plaintiff, Phi Theta Kappa and
14 the counter-defendant, Dr. Lynn Tincher-Ladner.

15 I'm joined with Rachel Smoot, who is also of my
16 office, and Charles Cowan, who is with the Wise Carter
17 Law Firm.

18 And I'm also here joined by Phi Theta Kappa's
19 corporate representative and also Dr. Tincher-Ladner
20 herself, Dr. Tincher-Ladner.

21 MR. LINKE: Derek Linke with Newman, LLP, and I
22 represent the defendants in this case, HonorSociety.org,
23 Inc., and Honor Society Foundation, Inc.

24 I also represent the witness today,
25 Michael Moradian.

1 And we are also joined by Honor Society client
2 representative Nader Moradian, as well as my co-counsel
3 in this case, Dakota Stephens, from the firm of
4 Jones Walker, LLP.

5 THE COURT REPORTER: Please raise your right
6 hand to be sworn in.

7
8 MICHAEL MORADIAN,
9 having been duly sworn, or affirmed, was examined
10 and testified as follows:

11
12 THE WITNESS: Yes, I do.

13 THE COURT REPORTER: Thank you.

14
15 EXAMINATION

16 BY MR. POLAK:

17 Q. All right. Mr. Moradian, we meet again.

18 Why did you mess with PTK's Wikipedia page?

19 MR. LINKE: Objection as to form.

20 THE WITNESS: Can you clarify what you mean by
21 "mess"?

22 BY MR. POLAK:

23 Q. Why did you mess with it?

24 A. I wouldn't characterize it with the term
25 "mess."

1 Q. What bothers you about the word "mess"?

2 A. It's a loaded implication.

3 Q. What's the implication?

4 A. Well, the implication is mischaracterization,
5 which is a perpetual habit of your legal style or maybe
6 some would say chicanery, but I wouldn't characterize it
7 as mess.

8 Q. So the implication is an attack on me, but what
9 about the word itself is inaccurate with respect to what
10 it is that you did to the PTK Wikipedia site?

11 MR. LINKE: Objection as to form.

12 THE WITNESS: I think the appropriate words
13 would be contribute, enhance, words of that nature.

14 BY MR. POLAK:

15 Q. Okay. So you think what you did contributed
16 and enhanced the PTK Wikipedia page; is that right?

17 A. I believe that objectively it imparted truth,
18 it imparted neutrality, it imparted objectivity, and the
19 objective -- in the sense of balance and, you know,
20 that's what Wikipedia is.

21 Wikipedia is meant to be an open-forum place to
22 convey reliable, verifiable truth, and to that effect,
23 you know, it is important that it be used as such and
24 not a grandstand to perpetuate narratives or agendas.
25 That's against the rules of Wikipedia.

1 It's also against, you know, the FTC Act of
2 1914 of placing advertisements natively, so to that
3 effect, I do know that the page was enhanced by
4 contributions by others.

5 Q. Was removing Fred Hayes' name from the PTK
6 Wikipedia page an enhancement?

7 MR. LINKE: Objection as to form.

8 THE WITNESS: Who is Fred Hayes?

9 BY MR. POLAK:

10 Q. Did you remove his name from the Wikipedia page
11 for PTK?

12 A. Well --

13 Q. It's a simple yes-or-no question. Did you
14 remove it?

15 A. Anything on Wikipedia has to be verifiable and
16 reliable. So to the extent that something is not cited,
17 it is actually not in my control, it's -- or anyone's
18 control. It is the duty of any editor to remove things
19 that are not verifiable and reliably placed on the
20 internet. So to -- I'm not even sure who this is, but
21 to the extent that it may have existed, I believe there
22 are no citations and we can both agree to that. The
23 facts speak for themselves.

24 MR. POLAK: Objection. Nonresponsive.
25

1 BY MR. POLAK:

2 Q. Did you remove the name of Fred Hayes from the
3 Wikipedia PTK page?

4 MR. LINKE: Objection as to form.

5 THE WITNESS: Can I have a moment to verify
6 this?

7 BY MR. POLAK:

8 Q. What are you looking at, sir?

9 A. I'm not looking at anything. I'm asking if I
10 can.

11 Q. What are you going to use to verify it?

12 A. Wikipedia.

13 Q. You're not supposed to be reviewing any
14 documents here, Mr. Moradian, unless I give them to you
15 or I ask you to. So please, if you have other things
16 opened on your computer desk, please shut them down now.

17 A. No, sir, I don't.

18 Q. Okay. So my question back to you,
19 Mr. Moradian, and I'll ask it a third time now, did you
20 remove Fred Hayes' name from PTK's Wikipedia page?

21 A. As per Wikipedia standards, anything that is
22 not verifiable and through third-party sources and
23 notable would be removed. To that extent, yes, as per
24 Wikipedia standards, it would have been removed.

25 MR. POLAK: Objection. Nonresponsive.

1 BY MR. POLAK:

2 Q. I'll ask you a fourth time, Mr. Moradian.

3 Were you the one who removed Fred Hayes' name
4 from the PTK Wikipedia page?

5 A. Asked and answered.

6 Q. Okay. You can answer, please.

7 Were you the one -- I'll ask a fifth time now,
8 were you the one who removed Fred Hayes' name from the
9 PTK Wikipedia page?

10 A. Per Wikipedia guidelines, yes. Anything should
11 be removed that is not verifiable, so if that's the
12 case, then yes, per Wikipedia guidelines.

13 Q. Still, your answer is not an answer,
14 Mr. Moradian.

15 Are you -- it's a very simple yes-or-no
16 question. I'm not asking you about guidelines, I'm not
17 asking you about how you did it, I'm not even asking you
18 yet why you did it.

19 My question is simply, yes or no, and so I
20 think this is now my sixth time asking this question:
21 Were you the one who removed Fred Hayes' name from the
22 PTK Wikipedia page?

23 A. Thank you, sir. I'm gonna answer it with the
24 context appropriate to answer.

25 The answer is per Wikipedia guidelines of

1 neutrality, verifiability, and objectivity, yes.

2 Q. So the answer to my question is yes, you were
3 the one who did it?

4 I can't tell from your answer whether you're
5 answering me yes or no.

6 Are you the one who did it? Eighth time.

7 A. I've already answered this question, and I'm
8 just gonna repeat the same answer. My answer has your
9 yes-or-no answer in it and that is the answer. Period.

10 Q. Okay. So to confirm and clarify for me, so I'm
11 clear, are you the one who removed Fred Hayes' name from
12 the PTK Wikipedia page for -- yeah, for PTK?

13 A. Per Wikipedia standards of verifiability, yes,
14 I am the one.

15 Q. Thank you.

16 Are you the one who removed Wes Moore's name
17 from the PTK Wikipedia page?

18 A. Sir, I don't know who these people are.

19 Q. Are you the one who removed his name?

20 A. I'm going to need more context. I can't answer
21 with just this amount of information.

22 Q. Why is it that you removed names of former
23 members -- I'm sorry, names of members of Phi Theta
24 Kappa identified on the PTK Wikipedia page?

25 A. That's a great question. It's, again, per the

1 standards of Wikipedia of verifiability, there is no
2 citation on any of the members that were removed and,
3 therefore, it is not in my hands as an individual
4 whether they should be there or should not be there.
5 It's the terms of service of Wikipedia.

6 And I do note that, you know, PTK in their new
7 rollout of design and, you know, obfuscating, you know,
8 the false advertising issues aside, did add the people
9 on their site and I commend them for putting a place on
10 the internet where these people finally exist because
11 Wikipedia cannot have floating objects with no
12 verifiable resource or verification on the internet.

13 So to the extent that, you know, Phi Theta
14 Kappa has now given them a citation and I -- and I do
15 notice that, you know, it looks like PTK has added them
16 both on their website and on their Wikipedia, then, you
17 know, there's a basis for them being there, but prior to
18 that, objectively, neutrally speaking, per the terms of
19 Wikipedia and to none of my interest or disinterest,
20 those members should not be there if they cannot be
21 verified.

22 Q. Mr. Moradian, you just said that I notice. Do
23 you have PTK's Wikipedia page up in front of you on the
24 screen?

25 A. Sir, when I say I notice --

1 Q. Yes-or-no question, Mr. Moradian. I will not
2 let you interfere with my examination by having a bunch
3 of documents up on your screen that are going to give
4 you answers to questions. You are to use the documents
5 and information that I give you here today unless I tell
6 you otherwise.

7 Do you understand?

8 MR. LINKE: Objection as to form.

9 THE WITNESS: Sir, my screen consists of a
10 large photo of myself, a small photo of you, a small
11 photo of Katie Langgle, I hope I pronounced that
12 correctly, a small photo of Derek Linke, Videographer B
13 and Nader Moradian, which is misspelled, and a
14 Dakota Stephens as well as -- and that's all. There's a
15 Zoom window and there's a Microsoft task bar at the
16 bottom and that's all I can see. I hope that provides
17 context.

18 BY MR. POLAK:

19 Q. I'm going to show you what has been marked as
20 Exhibit 378.

21 Do you have your Exhibit Share folder up?

22 A. No, sir. Do you give me authorization to
23 change my window into that format?

24 Q. Yes, I do.

25 (Exhibit 378 marked for identification.)

1 THE WITNESS: I am in Veritext Exhibit Share
2 and I -- where should I see this document?

3 BY MR. POLAK:

4 Q. I don't know, it probably populates differently
5 on different people, but when you go into the marked
6 exhibits, you will see there is a Exhibit 378 HS
7 30(b)(6) notice.

8 A. So in my folder, I only see recent files dating
9 back from an August deposition, if someone could assist
10 me, I --

11 Q. Well, here, I'll just share my screen and show
12 it to you. Probably easier this way.

13 This is Exhibit 378. And do you see the
14 exhibit number down there at the bottom right-hand
15 corner?

16 This is titled "Phi Theta Kappa Honor Society's
17 Amended Notice of First Rule 30(b)(6) Deposition to
18 HonorSociety.org."

19 And I'll scroll through it here for you.

20 It has some definitions under Schedule A, and
21 then under Schedule B, there is some topics.

22 Do you recognize that document?

23 A. Yes, I do.

24 Q. Okay. You understand that you are here as a
25 representative of Honor Society to testify on behalf of

1 that company for information that company has responsive
2 to those topics, right?

3 A. Yes, sir.

4 Q. What did you do to prepare for this deposition?

5 A. I reviewed that notice. I reviewed my
6 declaration. I reviewed Dr. Lynn Tincher-Ladner's
7 declaration, and I reviewed Wikipedia.

8 Q. Which declaration is it that you reviewed that
9 was -- you said you reviewed your declaration. Which
10 one was it?

11 A. I believe it would be the one referencing
12 Wikipedia.

13 Q. There were two that you submitted. One said
14 that the only reference to Wikipedia was that you had
15 not made edits for some time and then there was a second
16 subsequent one that identified more of those as I
17 recall.

18 I might have those two backwards, but there was
19 one more that was more substantive in terms of the
20 explanation about the edits made by you to the Wikipedia
21 site. Is the more substantive one the one that you
22 reviewed?

23 A. I'm not sure.

24 Q. But your recollection is you only reviewed one?

25 A. I believe so.

1 Q. You said that you reviewed Wikipedia. What
2 does that mean?

3 A. Well, I looked at the article, I looked at the
4 history, and I reviewed Wikipedia as a platform, as a
5 whole.

6 Q. Okay. You said you looked at an article. What
7 article are you talking about?

8 A. I believe that would be the one that we're here
9 to discuss, which would be the Phi Theta Kappa page.

10 Q. When is it that you looked at the Phi Theta
11 Kappa page to prepare yourself for today?

12 A. I'm sorry, did you say Theta Kappa or
13 Beta Kaplan?

14 Q. I think you heard me, Phi Theta Kappa, the one
15 that we're talking about. When is it that you reviewed
16 that page?

17 A. Well, I reviewed it last night.

18 Q. Any other times to prepare for today?

19 A. I don't believe so.

20 Q. You said that you looked at what you described
21 as history in connection with Wikipedia. What are you
22 talking about there?

23 A. Sure.

24 So every page has a history and you can click a
25 button called "view history" and the result is you'll

1 review the history of the page.

2 Q. How often or how many times did you look at the
3 history for PTK's Wikipedia page?

4 MR. LINKE: Objection as to form.

5 BY MR. POLAK:

6 Q. To prepare for today?

7 A. Last night and briefly when we were discussing
8 scheduling this meeting.

9 Q. You also said you looked at Wikipedia as a
10 platform. What did you mean by that?

11 A. So just reviewing the information on the site,
12 researching and rereading their pillars, for example,
13 which discuss the importance of notability,
14 verifiability, objectivity; just, you know, the things
15 that you would be familiar with to understand Wikipedia.

16 Q. Was that the first time that you ever looked at
17 those?

18 A. No, sir.

19 Q. When you looked at the PTK Wikipedia page to
20 prepare for today, were you looking for anything
21 specific?

22 A. Well, per the notice that you showed me, I was
23 looking to understand to make sure that I was informed
24 to be able to testify and answer those three questions.

25 Q. Same question as to when you looked at the

1 history that you described for the PTK Wikipedia page,
2 were you looking for anything specific?

3 A. To have the ability to answer those three
4 questions I'm here to testify about.

5 Q. When you reviewed your declaration, were you
6 looking for anything specific?

7 A. To have the ability to answer the three
8 questions I'm here to answer on behalf of the 30(b)(6).

9 Q. Did you see anything new -- well, let me
10 rephrase that question.

11 When you reread your declaration, was there
12 anything that you read that you didn't recall?

13 MR. LINKE: Objection as to form.

14 BY MR. POLAK:

15 Q. Sometimes when you read things even though you
16 signed it weeks before or you've picked it up weeks
17 before you read it and you go, oh, yeah, I remember that
18 now, that's kind of what I'm talking about here,
19 Mr. Moradian.

20 When you read the declaration, was there
21 anything that you saw that was kind of like that?

22 A. I don't believe so.

23 Q. Same thing with the PTK Wikipedia page?

24 A. Can you please repeat the core question.

25 Q. Was there anything that struck you when you

1 were looking at it, you're like, oh, yeah, now I
2 remember that, I wasn't thinking about it, but now I
3 remember?

4 A. I'm not sure how to answer that. I'll try to
5 the best of my ability and I believe, you know,
6 something that jumped out to me is that, as I said, that
7 I had noticed that, oh, you know, Phi Theta Kappa has
8 decided to, you know, acknowledge their member base on
9 their website. That wasn't there before when you click
10 on the verifiability, that was something new, it didn't
11 exist before. And so, you know, I'm happy for them that
12 they were able to bridge that gap between, you know,
13 just putting unsubstantive things on Wikipedia and
14 substantive things. So to that effect, I was surprised
15 and, you know, happy for them that, you know, they
16 looked to at least try to verify what they were claiming
17 on Wikipedia.

18 Q. When you reviewed the Wikipedia as a platform
19 to prepare for today's deposition, did you learn
20 anything new that you didn't know before?

21 A. I don't believe so.

22 Q. So you said that you reviewed the notice, you
23 reviewed your declaration, you reviewed
24 Dr. Tincher-Ladner's declaration, and you reviewed these
25 various things on Wikipedia to prepare for today.

1 Did you do anything else to prepare for today?

2 A. I don't believe so.

3 Q. Did you have discussions with anyone that works
4 for Honor Society to see what information they have
5 relative to these topics?

6 A. To my knowledge, there is no basis for anybody
7 to have any knowledge on the topics.

8 MR. POLAK: Objection. Nonresponsive.

9 BY MR. POLAK:

10 Q. My question was not what you knew what other
11 people did.

12 My question was whether you had discussions
13 with anyone at Honor Society about whether they had
14 knowledge of information responsive to these topics?

15 A. I had informed the members of the team that I
16 will be in this deposition and opened the forum to have
17 discussion about this deposition. I was not imparted
18 any knowledge from any other party.

19 Q. When was that?

20 A. I believe that was yesterday and perhaps a
21 meeting before that as well.

22 Q. Who was at the meeting?

23 A. Dave Asari, who is a contractor, and
24 Michael Calvert.

25 Q. Tell me about that meeting.

1 A. Sure.

2 So it's just a brief conversation where
3 everyone discusses the week ahead. This is a part of my
4 week ahead, so I informed the team and, you know, we
5 took it from there, talked about the week ahead and that
6 was the extent of the conversation.

7 Q. What did you tell them about today?

8 A. I informed them I have the pleasure of sitting
9 with you today and that I look forward to speaking with
10 you like always and engaging in friendly dialogue hoping
11 to, first and foremost, protect students and, you know,
12 protect objectivity and truth.

13 Q. Did you tell them anything else?

14 A. I believe that's all. I informed them of the
15 deposition and opened up a forum for anybody to ask
16 questions or comments and mentioned that I'm looking
17 forward to speaking with you today and came here to
18 answer your questions to the best of HonorSociety.org's
19 collective ability.

20 Q. What do you mean by you "opened up a forum"?

21 A. As I said, I -- I said we're having this
22 meeting tomorrow and paused and waited to see if anybody
23 had anything to add or say.

24 Q. Did you share with them the deposition notice
25 that we just looked at?

1 A. I don't believe so.

2 Q. Did you mention the specifics of the three
3 topics?

4 A. I don't believe so.

5 Q. Did you ask them if they made any revisions to
6 PTK's Wikipedia page?

7 A. Nobody on our team, and I have had
8 conversations to this effect, uses Wikipedia in an
9 editor capacity. We've discussed that in depth and
10 nobody on our team uses Wikipedia, so that was already
11 an established fact.

12 Q. When?

13 A. Since -- numerous times since the initial
14 Wikipedia escalation, or whatever term you would prefer
15 to use, that Dr. Tincher-Ladner and you put forward.
16 You know, it's been a conversation and nobody's from the
17 layer of Wikipedia, nobody's made edits to Wikipedia of
18 any page. That was discussed again. And so I have that
19 understanding that I have explicitly asked whether
20 people have used Wikipedia, and the answer has been no
21 every time.

22 Q. Okay. So let's go back to make sure I
23 understand what timing you're talking about.

24 Dr. Tincher-Ladner filed her supplemental
25 declaration on July 24th of this year. So when you say

1 that you had a conversation with your team about their
2 use of Wikipedia, was it before she filed her
3 supplemental declaration about Wikipedia edits or after?

4 MR. LINKE: Objection as to form.

5 THE WITNESS: I would say that since filing
6 to -- you know, we've discussed Wikipedia and people's
7 activity from that date up until our last meeting and so
8 I have an understanding both from that July 24th date
9 before and then, secondly, from yesterday and before.

10 BY MR. POLAK:

11 Q. So are you telling me, Mr. Moradian, that you
12 directly asked David Asari whether he was responsible
13 for any edits to PTK's Wikipedia page?

14 A. I have asked that before, yes.

15 Q. When is it that you asked him? After July 24th
16 of this year?

17 A. Yes.

18 Q. What was that?

19 A. Yes, sir.

20 Q. Are you telling me that you had a direct
21 conversation with Michael Calvert about whether he made
22 any edits to PTK's Wikipedia page?

23 A. Yes, sir, that's correct.

24 Q. And what did he tell you?

25 A. Both of them individually confirmed that they

1 have never edited the Phi Theta Kappa page nor pages
2 generally.

3 Q. Did you have any conversations with
4 Tina Murtagh over whether she has made any edits to
5 PTK's Wikipedia page?

6 A. Yes, I have.

7 Q. And what did she tell you?

8 A. The same thing.

9 Q. Which is what?

10 A. She has not edited the Wikipedia page of
11 Phi Theta Kappa before ever.

12 Q. I think you have someone who works with you in
13 some capacity named Ryan. Do you know who I'm referring
14 to?

15 A. I believe so, yes.

16 Q. What is that person's full name?

17 A. The account you're referring to is an alias
18 account that is used to answer questions, the full name
19 is Ryan Evans.

20 Q. Is Ryan Evans not a real person?

21 A. It's an alias.

22 Q. Of who?

23 A. Of the company.

24 Q. Who has control over that alias?

25 A. David Asari and, secondly, I do.

1 Q. So you read Lynn's -- or Dr. Tincher-Ladner's
2 declaration in preparation for this deposition, right?

3 A. Yes, sir.

4 Q. You saw and read her allegations made in that
5 declaration about the edits that were made to PTK's
6 website, correct? PTK's Wikipedia page, right?

7 A. Would you mind repeating that again?

8 Q. You read what had she wrote about her
9 observations of the changes that were made to PTK's
10 Wikipedia pages, right?

11 A. I did read it, yes.

12 Q. And she claimed in that declaration that
13 someone under the name "WikiObjectivity" was responsible
14 for the changes that she was concerned about, right?

15 A. That's my understanding, yes.

16 Q. Do you deny making any of the changes that she
17 identified in her declaration as being of concern?

18 MR. LINKE: Objection as to form.

19 THE WITNESS: Would you mind repeating that,
20 please?

21 BY MR. POLAK:

22 Q. Do you deny making any of the changes that
23 Dr. Tincher-Ladner identified in her declaration as
24 being of concern?

25 MR. LINKE: Objection as to form.

1 THE WITNESS: To the extent that there was
2 objectivity, verifiability, and reliability added per
3 Wikipedia guidelines, I do acknowledge, yes.

4 BY MR. POLAK:

5 Q. So the answer to my question is yes, you're the
6 one that did those?

7 A. I -- yes, I imparted neutrality and truth.

8 Q. It's a straightforward question, I didn't ask
9 you why you did it, we'll get to that. I didn't ask you
10 how you did it, we'll get to that.

11 I just want to make sure we're clear on the
12 record that you were the one who made those edits that
13 she identified in her declaration as being of concern.
14 Right?

15 MR. LINKE: Objection as to form.

16 THE WITNESS: Yes, sir, per the Wikipedia
17 guidelines, I did make those changes.

18 BY MR. POLAK:

19 Q. Did you make those in your capacity as an
20 executive for Honor Society?

21 MR. LINKE: Objection as to form.

22 THE WITNESS: I -- no, sir, I don't believe
23 Wikipedia works like that.

24 BY MR. POLAK:

25 Q. So you were not doing that on behalf of

1 Honor Society?

2 MR. LINKE: Objection as to form.

3 THE WITNESS: I was adding the context and
4 knowledge base that I, as an individual and as a curator
5 of the Honor Society museum, which is the largest
6 Honor Society museum and had the ability to curate,
7 learn about, and impart.

8 I think part of Wikipedia's guidelines as for
9 the cultural sector and specifically calls out museum
10 curators and librarians to help impart the cultural
11 sector. And to that effect, book librarians and museum
12 curators have been involved in the Phi Theta Kappa page.

13 BY MR. POLAK:

14 Q. Sir, are you telling me that you personally and
15 individually accept responsibility for any damage those
16 edits may have caused to PTK?

17 MR. LINKE: Objection as to form.

18 THE WITNESS: Sir, as I just said, I was
19 working on behalf of being a museum curator and not as
20 an individual, so I was working upon it with the
21 Honor Society museum.

22 BY MR. POLAK:

23 Q. The Honor Society museum is part of the
24 Honor Society Foundation?

25 A. That is correct.

1 Q. And the Honor Society Foundation is associated
2 with the HonorSociety.org organization?

3 A. I believe so.

4 Q. I think the last time or one of the last times
5 that we've spoken, you told me that you were the
6 executive director for the Honor Society Foundation.
7 Are you still holding that office for the foundation?

8 A. Yes, sir.

9 Q. You have employees other than Mr. Asari or
10 Mr. Calvert that work at College Budget, right?

11 MR. LINKE: Objection as to form. It's outside
12 the scope of the noticed topics.

13 BY MR. POLAK:

14 Q. You can answer the question.

15 A. I don't know.

16 Q. You don't know? What do you mean you don't
17 know?

18 A. I didn't prepare for that today.

19 Q. Aren't you the president of College Budget?
20 Don't you own that company?

21 MR. LINKE: Objection as to form. This is
22 outside the scope of noticed topics.

23 BY MR. POLAK:

24 Q. Don't you own that company, Mr. Moradian?

25 MR. LINKE: Same objection.

1 THE WITNESS: I'm here to answer the three
2 questions that you asked me to testify for for this
3 30(b)(6), and I will be happy to answer those questions.

4 BY MR. POLAK:

5 Q. Mr. Moradian, you don't get to play lawyer
6 today. Your lawyer can play lawyer, you don't get to.

7 Please answer my question and I promise you it
8 is relevant to the three topics that I will connect the
9 dot here in a second.

10 My question for you is, do you -- are you
11 seriously telling me you don't know who works for you at
12 College Budget?

13 I'm not asking for a list, I'm just asking for
14 a yes or no.

15 MR. LINKE: Mr. Polak, in line with
16 Judge Meyers' discussion with the parties about this
17 deposition being strictly limited to 30(b)(6) topics, I
18 would request that you make a proffer about how this is
19 going to be relevant so we can consider it in good faith
20 because I do want this to proceed smoothly.

21 MR. POLAK: It's in violation of the agreement
22 that we have, Derek. You can object to your question.

23 BY MR. POLAK:

24 Q. Mr. Moradian, I'm just trying to find out -- my
25 next question to you is going to be whether you had

1 discussions with anyone at College Budget to find out if
2 anyone there made edits to PTK's Wikipedia page.

3 But my question right now is, do you even know
4 who works for you over there?

5 A. To my knowledge, the only employee other than
6 myself at College Budget is David Asari.

7 Q. I'll ask you about Campus Buddy. Do you
8 presently have any employees over there?

9 A. Campus Buddy and College Budget are the same
10 organization.

11 Q. So are you telling me that you didn't -- I'm
12 sorry.

13 Did you have any conversations other than with
14 Mr. Asari with anyone associated with College Budget or
15 Campus Buddy about whether they made edits to PTK's
16 Wikipedia site?

17 A. You previously asked about employed and now
18 you're using the word "associated," so I just want
19 clarity to what you mean.

20 Q. In any way associated with those organizations,
21 did you have any conversations with anyone over there
22 about whether they made any edits to PTK's Wikipedia
23 page?

24 A. Yes.

25 Q. Who?

1 A. I talked to and confirmed with Gerard Trinidad
2 and Maria Alcante to confirm that they have not made any
3 editing.

4 Q. When did that happen?

5 A. In the last week and at the time of -- of this
6 mischaracterization/escalation of Phi Theta Kappa's
7 Wikipedia page.

8 Q. Was this at the same meeting you were
9 describing before involving Mr. Asari and Mr. Calvert
10 where you were, I think, preparing for the week?

11 A. No, this was on a customer service call or a
12 call with the team that does customer service that I sit
13 in on from time to time.

14 Q. When was this?

15 A. I believe it was last week, the last time it
16 occurred.

17 Q. Who else was present?

18 A. David Asari.

19 Q. Anybody else?

20 A. The said individuals.

21 Q. Anybody else?

22 A. No, sir.

23 Q. So what did Mr. Trinidad tell you?

24 A. Mr. Trinidad and Maria don't have much
25 knowledge about PTK in general. They never heard about

1 it prior to the litigation and they assured me that they
2 have not done anything outside of their scope.

3 Q. Do you have anybody else working in your
4 customer service area other than Mr. Trinidad and
5 Ms. Alcante?

6 A. I'm not sure how this ties into the three
7 questions that we prepared for for today.

8 Q. You can still answer the question, though,
9 Mr. Moradian.

10 I'm trying to figure out who all you talked to
11 since you're testifying on behalf of the company, but I
12 shouldn't have to explain myself to you.

13 The way this works, as you know, because this
14 is, I think, your fourth deposition, maybe fifth, I ask
15 the questions, you give the answers, and if your lawyer
16 has an issue, he'll say his peace, but -- so my
17 question, please answer it.

18 MR. LINKE: Objection as to form.

19 THE WITNESS: Would you mind repeating the
20 question, please?

21 BY MR. POLAK:

22 Q. Who else works for you in any capacity in
23 connection with that customer service function other
24 than Mr. Trinidad and Ms. Alcante?

25 MR. LINKE: Objection as to form.

1 THE WITNESS: I believe just David Asari as
2 well.

3 BY MR. POLAK:

4 Q. Did you have conversations with anyone else
5 associated with any organization that you were
6 affiliated with about whether they provided edits or
7 made edits to PTK's Wikipedia page?

8 A. Yes.

9 Q. Who?

10 A. I also discussed with Nader Moradian and
11 confirmed that he has not used Wikipedia in editor
12 fashion.

13 Q. Anybody else other than Nader and the other
14 people that we've spoken about?

15 A. I have confirmed with Burjiss Pavri since I
16 last spoke to him about a week ago and post Wikipedia
17 mischaracterization and escalation and -- I believe
18 that's everybody.

19 Q. Is there anybody affiliated or associated with
20 your family of companies that you did not speak with
21 about whether they made edits to the Wikipedia page for
22 PTK?

23 A. I don't believe so.

24 Q. Okay. I'm going to ask you some questions
25 about communications that were had with your lawyers.

1 These are going to be very simple yes-or-no questions,
2 and they are going to be the types of questions that ask
3 for information that would be on what we lawyers call a
4 privilege log, so it's going to be the identities of the
5 people involved in the conversation, a general subject
6 of the conversation without disclosing the privileged
7 underlying communications, and the dates that those
8 conversations occurred, okay?

9 Your lawyer, I'm sure, is going to be objecting
10 here from time to time or at least giving you some
11 guidance to make sure you don't step on the
12 communications that you had, but I wanted to give you
13 that preface so you understand what I'm getting at. I'm
14 not asking you for the substance of what you discussed,
15 like the advice that you received, like do this, don't
16 do that, I'm not asking for that. I'm just going to be
17 asking you for the who, a general subject of the what,
18 and the when. Okay?

19 So my question for you is this --

20 A. Sir, I think we've been going about an hour.
21 Would you mind if I take a restroom break and a water
22 break?

23 Q. Let me ask you this question first and then we
24 will.

25 With respect to -- I understand the first edits

1 that you made were in April of 2024 being the first
2 edits that you made to the PTK Wikipedia page.

3 Did you have any conversations with any lawyers
4 prior to that date concerning editing Wikipedia pages?
5 It's a simple yes or no.

6 MR. LINKE: I instruct the witness not to
7 answer the question to the extent it requires disclosing
8 attorney-client privileged communications. And
9 objection as to form.

10 BY MR. POLAK:

11 Q. You can answer, Mr. Moradian.

12 A. I don't believe that there was consultation
13 with lawyers at that time.

14 MR. POLAK: Okay. We can take that break now.

15 It's presently 11:30 your time, so why don't we
16 come back at 11:40 your time, Pacific.

17 VIDEOGRAPHER: Okay. Stand by.

18 This marks the end of Media No. 1. Going off
19 the record at 11:30 a.m. Pacific. Thank you.

20 (Off the record at 11:30 a.m.)

21 (Back on the record at 11:45 a.m.)

22 VIDEOGRAPHER: We are back on the record at
23 11:45 a.m. Pacific. And this marks the beginning of
24 Media No. 2, deposition of Michael Moradian.

25 Please proceed, Counsel.

1 BY MR. POLAK:

2 Q. All right. Mr. Moradian, I want to ask you
3 some questions generally about your familiarity with
4 Wikipedia.

5 First of all, when did you first become aware
6 of the Wikipedia website?

7 A. To the best of my knowledge, it would be near
8 the time that it was founded.

9 Q. When was that?

10 A. I don't recollect specifically, I believe it
11 was in the early 2000s.

12 Q. Why would you use it in your life?

13 A. Well --

14 MR. LINKE: Objection to form.

15 THE WITNESS: I mean, Wikipedia is the largest
16 collection of neutral, verifiable, objective information
17 that has ever existed. And so it's important -- you
18 know, people rely on Wikipedia to seek absolute truth,
19 to seek verifiability, to look at a platform that is not
20 biased and to help them understand the world around
21 themselves, so it's an incredibly important platform and
22 one where if -- you know, should not be used to bias and
23 trick people. Should not be -- the user should
24 disclose -- it's -- you know, you're not allowed to edit
25 on behalf of your own company, that's a strict conflict

1 of interest and the result is this beautiful creation
2 where the world can access information that is, again,
3 objective, neutral, and verifiable.

4 And so in my life as a curator of a museum, as
5 a student, as a learner, you know, I have used it almost
6 daily and I think many people around the world have.
7 And I believe that -- it's a very powerful, important
8 tool and it needs to be, you know, truthful to protect
9 the users. To protect people that use the platform,
10 that rely on it, and so -- yeah, I love Wikipedia and I
11 think it's a very important tool for educators and for
12 individuals to view objectively.

13 BY MR. POLAK:

14 Q. Would it be a conflict of interest for someone
15 who's involved in a lawsuit with somebody else to go and
16 edit their opponent's Wikipedia page to put forth the
17 narrative or legal theory they're relying on in the
18 lawsuit; would that be a conflict of interest?

19 MR. LINKE: Objection as to form.

20 THE WITNESS: An interesting statement.

21 However, per Wikipedia guidelines, the guidelines say
22 that an owner or an employee of the company must not
23 edit their own page and it simply refers to specifically
24 within litigation as a lesser should not.

25 And so when you're dealing with the must not,

1 this is the lesser of two, and so, you know, while I
2 ordinarily would not edit a page and in this context you
3 have to look at the severity of the violation. And when
4 you're looking at, you know, false advertising, gross
5 mischaracterization and -- and to be clear, I have
6 nothing against PTK and I have nothing against
7 Dr. Tincher-Ladner. I think they both have tremendous
8 potential.

9 I believe in them, in their ability to reform
10 themselves, acknowledge truths, and be the best they can
11 be, but it is important that we acknowledge objective,
12 neutral, and verifiable facts. And I think that that
13 has been something that has been an issue in this case
14 is, you know, mischaracterizing truth, hiding truth.
15 You know, these are major, major issues.

16 I don't control Wikipedia and I don't own
17 Wikipedia and so to the extent that any contribution is
18 on the site, it would be by third-party administrators
19 who are qualified librarians, historians that view the
20 information and I don't have, you know, anything other
21 than a contributor role and that's all.

22 MR. POLAK: Move to strike, nonresponsive.

23 BY MR. POLAK:

24 Q. My question to you was whether it was a
25 conflict of interest for that to happen, simple yes or

1 no.

2 A. As I described in depth, it is a lesser
3 conflict in interest than what was presented on
4 Wikipedia in terms of an owner or leader of a page
5 editing their own page.

6 Q. Is a lesser conflict of interest still a
7 conflict of interest?

8 MR. LINKE: Objection as to form.

9 THE WITNESS: Again, it's -- it's a lesser of
10 the two and so it's actually resolving conflict.

11 BY MR. POLAK:

12 Q. How is the creation of a conflict of interest a
13 resolution of a conflict of interest in that
14 circumstance? I'm not following.

15 MR. LINKE: Objection as to form.

16 THE WITNESS: I think you do understand that --

17 BY MR. POLAK:

18 Q. I don't. I wouldn't have asked the question if
19 I did.

20 I'm trying to understand how a conflict of
21 interest under those circumstances can actually resolve
22 a conflict of interest. If somebody who is involved in
23 a lawsuit with the opposing party goes and makes edits
24 to that opposing party's PTK page consistent with that
25 person's litigation narrative, how does that resolve the

1 conflict of interest?

2 MR. LINKE: Objection as to form.

3 THE WITNESS: I'm happy to answer that. When
4 there are perpetuated objective lies, false advertising,
5 misstatements, placed by a leader, an owner or employee
6 of an organization on their Wikipedia page, then whoever
7 corrects that, whoever brings that in line is bringing
8 the page closer to compliance.

9 BY MR. POLAK:

10 Q. So in your mind, it's not okay for PTK to edit
11 its page, but it is just fine for you, as an adversary
12 in litigation, to go make whatever changes you think are
13 appropriate or necessary to their page. And you're not
14 conflicted at all in doing that; is that your position?

15 MR. LINKE: Objection as to form.

16 THE WITNESS: Sir, I think you're trying to put
17 words in my mouth.

18 But what I did say is that Wikipedia is an
19 objective, neutral platform that encourages
20 verifiability and objectivity.

21 And to the extent of the pages brought more in
22 line and out of noncompliance due to gross
23 mischaracterizations of owner, leader of a page, yes,
24 that is an improvement and that's why it's accepted by
25 Wikipedia and it's as simple as that.

1 BY MR. POLAK:

2 Q. When -- well, why don't you tell me, what was
3 your very first edit ever to a Wikipedia page?

4 MR. LINKE: Objection as to form. Outside the
5 scope of the noticed topics.

6 THE WITNESS: I believe my first edit ever,
7 which is, I believe, what you're asking; is that right?

8 BY MR. POLAK:

9 Q. That's correct.

10 A. Would have been in the early 2000s. Likely
11 about UCLA when I was attending UCLA as a student.

12 Q. Since that first edit, did you make any other
13 edits to Wikipedia pages up until the time that you made
14 the first edit to PTK's page?

15 MR. LINKE: Objection as to form. Outside the
16 scope of the noticed topics.

17 THE WITNESS: I can't remember every edit.

18 BY MR. POLAK:

19 Q. Did you make --

20 A. I didn't prepare for this.

21 Q. And did you make any edits between the first
22 edit that you claimed to have made in 2000 to the first
23 edit you made to the PTK Wikipedia page?

24 MR. LINKE: Objection as to form. Objection,
25 outside the scope of the noticed topics.

1 THE WITNESS: I'm not sure, I didn't prepare
2 for this.

3 BY MR. POLAK:

4 Q. So is the answer I don't know? Or do you know
5 and you just don't want to tell me?

6 A. Of course not, Mr. Polak.

7 Q. No one --

8 A. You know --

9 Q. Mr. Moradian -- okay. We can't talk over each
10 other.

11 I'm just telling you, if you know the answer to
12 the question, just answer the question.

13 A. Sure.

14 Q. It's a simple yes or no, did you make any edits
15 to Wikipedia between the time you made the first one
16 back in 2000-ish to 2024 when you made the edits to
17 PTK's Wikipedia page?

18 MR. LINKE: Objection as to form. Objection as
19 being outside the scope of the noticed topics.

20 THE WITNESS: Just to give some context of what
21 I do remember, and I don't remember everything, but I
22 would say that I did used to use Wikipedia a lot and was
23 a regular user and editor in the early 2000s.

24 BY MR. POLAK:

25 Q. So since the early 2000s to April of 2024, it

1 doesn't sound like you made any other edits, or at least
2 you don't recall making any other edits to anyone's
3 Wikipedia pages; is that right?

4 MR. LINKE: Objection as to form. Objection,
5 outside the scope of the noticed topics.

6 THE WITNESS: Yeah, I don't have any -- I
7 didn't prepare for that. I'm not sure how to answer
8 that.

9 BY MR. POLAK:

10 Q. Well, I'm not asking you whether you prepared,
11 and I'm not asking -- if you don't -- if you're not sure
12 on how to answer my question, is there something
13 confusing about my questions to you? The words that I
14 used? Or do you understand it and you just don't want
15 to give me the answer that's in your head?

16 A. Well, I'm trying my best to answer your
17 questions and I'm trying to give you the best answer I
18 can.

19 Q. Well, the answer to my question could either be
20 yes, I did make edits, no, I didn't make any edits, or I
21 don't know. Which is it?

22 A. So I believe the answer, as I've said before,
23 is that I don't know.

24 Q. Okay. So you admitted in your declaration that
25 you have used the handle "WikiObjectivity" to make edits

1 to PTK's Wikipedia page, right?

2 A. I believe so, yes.

3 Q. Have you ever used any other handle to make
4 edits on Wikipedia?

5 MR. LINKE: Objection as to form. Outside the
6 scope of the noticed topics.

7 THE WITNESS: I don't remember.

8 BY MR. POLAK:

9 Q. Have you used any handle other than
10 "WikiObjectivity" since April of this year to make edits
11 to Wikipedia pages?

12 A. No, sir.

13 Q. What about this year generally in 2024?

14 A. I don't believe so.

15 Q. What about in the last five years -- actually
16 since -- since COVID started in 2020, have you used any
17 other handle to make edits to Wikipedia pages?

18 MR. LINKE: Objection as to form. Objection as
19 being outside the scope of the noticed deposition
20 topics.

21 THE WITNESS: Yeah, I really can't say. I
22 don't remember every moment of every day. And as I
23 said, I use Wikipedia a lot, so I'm trying to answer to
24 the best of my ability. It's a very broad question.
25

1 BY MR. POLAK:

2 Q. If I wanted you to go on Wikipedia and identify
3 or find every handle you've ever used to make edits to
4 Wikipedia pages, where would you go?

5 A. So I don't believe that there is a repository
6 of anybody making edits anywhere because you don't have
7 to be logged in. And to that extent, you know, I'm not
8 a regular editor and I don't know what other accounts
9 and when I've used it, but if you ask me more specific
10 questions, I'd be happy to answer them.

11 Q. What type of more specific question would I
12 need to ask you to get the information?

13 A. Well, it would be something on those three
14 points that I prepared for today. I'd be most able to
15 answer those.

16 Q. Did you use any handle other than
17 "WikiObjectivity" to make edits to PTK's pages?

18 A. No, sir.

19 Q. You said that you could make edits to a
20 Wikipedia page without logging in. Does that mean that
21 you wouldn't -- that any changes that you would make
22 would not be associated with a handle?

23 A. I think to my knowledge, and I don't know that
24 I've ever done that, but to my knowledge, it would be
25 associated with an IP address and it's -- yeah, so it is

1 associated with something.

2 Q. Okay. So I take from your answer, then, that
3 all of the changes that you made or edits that you made
4 to PTK's Wikipedia page were made under the handle
5 "WikiObjectivity" and not under any other handle or
6 anonymously through an IP address?

7 MR. LINKE: Objection as to form.

8 THE WITNESS: Yes, sir, that's correct.

9 BY MR. POLAK:

10 Q. So I'd like you to walk me through the process
11 of making a change to a Wikipedia page. What do you
12 have to do in order to -- to do that?

13 A. I don't know that I can speak to the Wikipedia
14 experience for everybody, so I don't know what the
15 answer to your question would be as phrased.

16 Q. Well, let's talk about how you do it.

17 If you want to make a change to a web -- I'm
18 sorry, I keep saying web page and that's not accurate.

19 If you want to make a change or an edit to an
20 existing Wikipedia page, how do you go about doing it?
21 Walk me through the process.

22 A. My understanding, you would log into an
23 account, you would identify what needs to be changed.
24 You would make sure that you comply with Wikipedia's
25 pillars. You would verify and find third-party

1 resources since this is an encyclopedia to verify the
2 edit. You would explain the edit so that anybody can
3 understand it and you would submit it. And that's my
4 understanding.

5 Q. Are your edits that you make to a Wikipedia
6 page supposed to be biased or unbiased?

7 MR. LINKE: Objection as to form.

8 THE WITNESS: Well, I think, to the best of my
9 abilities, you know, it's been very important to try to
10 strive to be as unbiased as possible and also to trust
11 the editor process and the administrator process to
12 fact-check, make sure things are objective and to
13 streamline.

14 And to -- that's the backbone and the success
15 of Wikipedia is that it doesn't rely on any contributor,
16 it's, instead, a community. And a community that is
17 knowledgable, that understands the community and that
18 contributes accordingly to the community and
19 self-monitors.

20 So I think that's, to my understanding, how
21 Wikipedia works, and that's why, you know, I strove to
22 give the most neutral edits that I could and accept any
23 edits that editors objectively made, and I think that's
24 why our -- my edits were largely thanked and awarded and
25 Dr. Tincher-Ladner's were banned, frankly, because

1 they're in direct violation.

2 BY MR. POLAK:

3 Q. Did you say that you won an award for your
4 edits to PTK's page?

5 A. I believe that the award referenced was to
6 another page.

7 Q. So if a jury or the Court read what you said a
8 second ago, that that is why you were awarded for your
9 work, you're not talking about an award that you got for
10 PTK's edits, right?

11 A. Well, actually, in a way I was awarded for my
12 edits to the Wikipedia -- PTK Wikipedia and others
13 because I was asked to join the Wikipedia fraternities
14 and sororities editor group, which is a very exclusive
15 group. There's only about 30 people in it, to my
16 knowledge. And to be admitted into that circle is
17 recognition of the knowledge, authority, and objectivity
18 of the work that I'm doing. So I would say that I was
19 awarded for my work.

20 Q. I've heard you use the following words to
21 describe your efforts to edit PTK's Wikipedia page.
22 I've heard you say that you were "unbiased." Is that
23 your understanding, that you were unbiased in your
24 edits?

25 MR. LINKE: Objection as to form.

1 THE WITNESS: So I wouldn't use the word
2 "unbiased," but I would -- and Wikipedia explains that
3 bias doesn't just occur, you know, from being a party,
4 but it's in how you utilize it. And by being a curator
5 of a museum, by having probably the most subject
6 knowledge of anybody in the general honor society space,
7 I was able to contribute my knowledge to objectively
8 enhance and verify information on the PTK page, but also
9 numerous other pages.

10 BY MR. POLAK:

11 Q. So you're saying you were biased, then?

12 I thought you said before that you were
13 unbiased, but now you said that you wouldn't use the
14 word "biased" or "unbiased," so which is it? Were you
15 biased or were you unbiased?

16 MR. LINKE: Objection as to form.

17 THE WITNESS: So I'm very familiar with the way
18 you operate. And you know, the way I answer that
19 question will be -- set up to be used against me either
20 way and, you know, this is just the way that you frame
21 your arguments. But I think you can be both. I
22 don't -- and Wikipedia allows you to contribute and, you
23 know, to add value and so I would say that the answer is
24 that I was less biased than any other resource that was
25 currently contributing.

1 BY MR. POLAK:

2 Q. So in your view, it is perfectly acceptable to
3 have some level of bias in making edits to Wikipedia
4 pages?

5 A. I would say that we strive for the least amount
6 of bias as possible, and to that effect, I was working
7 towards that.

8 MR. POLAK: Objection. Nonresponsive.

9 Could you read the question back, please?

10 THE COURT REPORTER: Yes.

11 (The question was read back.)

12 THE WITNESS: Again, there's a relativism to
13 all statements. Nobody is a zero in unbiased.
14 Everybody, whether you're a member of PTK or not invited
15 to PTK, whether you went to community college or didn't
16 go to community college, you have some level of bias.
17 And so lowering it from the 100 standard of the most
18 biased owner/operator of an organization is an
19 improvement.

20 And so to the extent possible, the job is
21 objectivity, that's the aim and the goal of Wikipedia,
22 and that's precisely and only what was done.

23 MR. POLAK: Objection. Nonresponsive.

24 BY MR. POLAK:

25 Q. My question for you, Michael, was not that

1 complicated.

2 I'm just asking you whether or not you believe
3 that it is consistent with Wikipedia's policy to make
4 edits even though those edits are, at some level,
5 biased?

6 MR. LINKE: Objection as to form.

7 THE WITNESS: We all have a duty to protect the
8 public, to protect students, and, you know, if my edits
9 are less biased, again, then it is in terms -- it is
10 within Wikipedia's terms, it's the difference of you
11 must not do something and you should not. And we
12 changed a must not, which is Dr. Tincher-Ladner editing
13 the page in conjunction with her wife, to a should not,
14 which is a museum curator who has subject knowledge that
15 can help enhance the page's objectivity to add
16 verifiable and credible sources.

17 So I believe that's why I'm -- I was awarded
18 and recognized for our contribute -- my contributions to
19 Wikipedia within the honor society space.

20 MR. POLAK: Objection. Nonresponsive again.

21 Could you read the question back, Ms. Langgle?

22 THE COURT REPORTER: Yes.

23 (The last question was read back.)

24 MR. LINKE: Same objection.

25 THE WITNESS: Yes, it is consistent with our

1 policies as per their policies regarding conflict of
2 interest.

3 BY MR. POLAK:

4 Q. And I think what you told me in a previous
5 answer was that you were just fine being biased in your
6 edits so long as it protects what your view is of what
7 is needed to protect children and students?

8 MR. LINKE: Objection.

9 BY MR. POLAK:

10 Q. In other words, the ends justifies the means;
11 is that what you're telling me?

12 MR. LINKE: Objection as to form.

13 THE WITNESS: I'm not really sure what you're
14 saying. All I understand is that Wikipedia's meant to
15 be a neutral, objective platform and contributions I can
16 help verify that and make it a more trusted place and a
17 more objective place is the main goal. And to that
18 extent, I pride myself on being able to be a contributor
19 and to help, you know, create an objective platform for
20 people to understand.

21 BY MR. POLAK:

22 Q. Was it your intention to be neutral in the
23 edits that you made to PTK's Wikipedia page?

24 MR. LINKE: Objection as to form.

25 THE WITNESS: I think so.

1 BY MR. POLAK:

2 Q. You've also used another word saying that there
3 must be "objectivity" in the edits. Do you recall that?

4 A. I do.

5 Q. Was it your expectation to be objective in the
6 edits that you made to PTK's Wikipedia site?

7 A. I think --

8 MR. LINKE: Objection as to form.

9 THE WITNESS: Ultimately, Wikipedia and its
10 standards and its objectivity are determined by neutral
11 third parties. And so to the extent possible, I would
12 like to contribute to that and I have no way of
13 contributing more than that. And I think that Wikipedia
14 and their resulting treatment -- I mean, we're talking
15 about educated librarians and professionals viewing this
16 information, so it's not random people. These are the
17 most knowledgeable -- subject knowledge people and they
18 accept what is objective.

19 If they feel it's not objective, they rewrite
20 it. And if they feel that something is point-of-view
21 washing or vandalism, they remove it.

22 And so it's really not in my hands as much as
23 they like to be framed that way, I have no control over
24 Wikipedia and I just simply contribute and add and
25 people, administrators, decide.

1 BY MR. POLAK:

2 Q. So you don't try to be objective with your
3 edits?

4 MR. LINKE: Objection as to form.

5 THE WITNESS: I do aim to be objective.

6 BY MR. POLAK:

7 Q. Okay. So the answer to my question before,
8 beyond what else that you said in that answer, is that
9 you do try to be objective in your edits to PTK's
10 Wikipedia page. That was the standard that you held
11 yourself to?

12 A. The standard that I held myself to was to
13 contribute to the page and to allow the administrators
14 to do their job to determine objectivity.

15 Q. So you didn't try to be objective?

16 A. To the best of my ability.

17 Q. What email account did you use to sign up for
18 "WikiObjectivity" as a handle?

19 A. I believe it was a account that I had
20 previously.

21 Q. Which was?

22 A. It's a TomBradyFan email that I have, and I
23 used it for setting up the account.

24 Q. So you used a personal email to sign up for
25 that account, not an Honor Society email?

1 MR. LINKE: Objection as to form.

2 THE WITNESS: Wikipedia doesn't require email
3 addresses to begin with.

4 BY MR. POLAK:

5 Q. Michael, this goes so much easier if you just
6 listen to the question I'm asking and you answer it the
7 way I've asked. Okay?

8 I didn't ask you what Wikipedia requires, you
9 know that I didn't ask you what Wikipedia requires, so
10 I'm going to move to strike your answer because it
11 doesn't answer the question. So now I'm going to ask it
12 again.

13 MR. POLAK: Ms. Langgle, could you read the
14 question back, please?

15 THE COURT REPORTER: Yes.

16 (The last question was read back.)

17 THE WITNESS: I don't know if I'm qualified to
18 judge whether it's a personal email or not personal
19 email. It's an email that I used.

20 BY MR. POLAK:

21 Q. Okay. Is that because you do use, from time to
22 time, that TomBrady email that you're referring to for
23 Honor Society business?

24 A. Well, it's used for Wikipedia edits in the
25 honor society space.

1 Q. So the answer is yes, you do use it for
2 Honor Society business?

3 MR. LINKE: Objection as to form.

4 THE WITNESS: I don't know if that would be
5 qualified as Honor Society business.

6 BY MR. POLAK:

7 Q. Okay. Well, you told me before you were unable
8 to distinguish what was Honor Society business versus
9 your personal use in connection with that email and
10 that's what I'm trying to get at.

11 So is that an email that you use for
12 Honor Society business or is it not an email that you
13 use for Honor Society business?

14 MR. LINKE: Objection as to form.

15 THE WITNESS: The only use case that it was
16 used for was for Wikipedia and so I don't know how to
17 answer more than that.

18 BY MR. POLAK:

19 Q. You have used some other terms that I want to
20 ask about in terms of Wikipedia.

21 One is the word "administrator." What do you
22 mean when you say that?

23 A. So my knowledge, there are administrators that
24 kind of have power over the pages and the users, and so
25 my understanding is they're administrators in place such

1 as Rublamb, who is a 35-year-old -- 35-year history of
2 being a librarian and historian, he or she seems to be
3 the administrator. I don't know who they are other than
4 just clicking their about page and they would have the
5 absolute discretion, to my knowledge, on the page.

6 Q. "Rublamb" is a handle just like
7 "WikiObjectivity" is a handle?

8 A. That is correct.

9 Q. And I think we've seen Rublamb on -- on the
10 history page for PTK's Wikipedia page, right?

11 A. I believe so.

12 Q. Have you had any -- well, do you communicate
13 with this person who goes by the handle "Rublamb"?

14 A. So to the best of my knowledge, that individual
15 awarded me the original barnstar -- barnstar award and I
16 thanked that person for recognizing my contributions and
17 that individual invited me to join the group of Wiki
18 fraternity and sorority editors acknowledging my work
19 and the value of my work and I thanked that individual
20 for recognizing me there as well and that's the extent
21 to which I engaged with this individual.

22 Q. So the answer to my question of whether you
23 communicate with them is yes?

24 A. I just gave you the most specific answer I
25 possibly could.

1 Q. Not really. But I just want to make sure the
2 record is clear.

3 Is the answer to my question, yes?

4 A. The answer is when Rublamb gave me an original
5 barnstar award, I thanked the individual. When they
6 added me to the Wikipedia fraternity and sorority
7 exclusive page, I also thank you'd the individual and
8 accepted my invitation, and that's the extent to which I
9 have spoken to this individual.

10 Q. So you've actually spoken with Rublamb?

11 A. That's the extent to which I have spoken on
12 Wikipedia in typing format to the said person.

13 Q. Have you ever spoken orally to Rublamb using
14 words coming out of your mouth?

15 A. No, sir.

16 Q. Have you ever emailed this Rublamb person?

17 A. I believe that Wikipedia does email the
18 individual when you write to them, so --

19 Q. How is it -- how is it that you write to them
20 through Wikipedia?

21 A. It would be on -- commenting on their --
22 whatever they wrote to me.

23 Q. If I went on the Wikipedia, would I be able to
24 see all of those communications?

25 MR. LINKE: Objection as to form.

1 THE WITNESS: I believe so. I'm not sure. I
2 would have to check for you.

3 BY MR. POLAK:

4 Q. Are there any communications you've had with
5 Rublamb that are not publicly available?

6 MR. LINKE: Objection as to form.

7 THE WITNESS: I would have to check on that as
8 well. I don't know of any.

9 MR. POLAK: And Madam Court Reporter, Rublamb
10 is R-o-b-l-a-m.

11 Is that right?

12 MR. LINKE: It's R-u-b-l-a-m-b.

13 MR. POLAK: Rublamb, R-u-b-l-a-m-b, okay.

14 BY MR. POLAK:

15 Q. How do you know this person has been a 35-year
16 librarian?

17 A. Again, as I mentioned, it's simply based on
18 their Wikipedia profile as well as the immense number of
19 awards from Wikipedia that this person has won. So I
20 have not investigated Rublamb. I do know that when you
21 click on their page, they have a myriad of awards and
22 are a highly decorated Wikipedia administrator and
23 that's verifiable publicly and so that's the only extent
24 which I know who or what Rublamb is.

25 Q. Do you have a phone number for this Rublamb?

1 A. No, sir.

2 Q. Do you have a name?

3 A. I don't believe I've seen a name, sir, it's
4 just what's on their Wikipedia page.

5 Q. Have you ever texted him or her?

6 A. I have no idea who Rublamb is.

7 Q. Are you familiar with someone that goes by the
8 handle "Anomi"- -- I'm sorry, "Anomiebot,"
9 A-n-o-m-i-e-b-o-t?

10 A. Well, to my knowledge, the term "bot" would
11 imply that it's an automated feature. I don't have any
12 more knowledge than that and I've not communicated with
13 him.

14 Q. So the answer to my question is you haven't had
15 any -- you don't know who that person is? You haven't
16 had any communications?

17 A. That's correct.

18 Q. Do you know anything about a greenC, space,
19 bot, green, capital letter C, bot?

20 A. No, sir, nothing that wouldn't be publicly
21 viewable to all of us.

22 Q. You ever had any communications with that
23 person?

24 A. I don't believe so, no, sir.

25 Q. Another user by the name of Jax MN, J-a-x M-N,

1 like the abbreviation for Minnesota.

2 Have you had any communications with that
3 person?

4 A. I don't believe so. I've just read their
5 Wikipedia page.

6 Q. You've looked at their Wikipedia page?

7 A. That is right.

8 Q. What do you know about their Wikipedia page?

9 A. I believe that they have won some award and
10 they're located in Minnesota. Or actually, I'm not even
11 sure they're located in Minnesota. I do know that they
12 acknowledge having some tie to Minnesota at some time,
13 that's my recollection.

14 Q. Are you aware of any edits they made to PTK's
15 Wikipedia page?

16 A. Not specifically.

17 Q. Same question for greenC bot?

18 A. No, not specifically.

19 Q. Same question for Anomiebot?

20 A. No, not specifically.

21 Q. Are you familiar with a handle or a person that
22 goes by the handle "DaveMCK," D-a-v-e-M-C-K, all one
23 word?

24 A. I'm not sure, but I believe I saw that account
25 last night for the first time if I remember correctly,

1 so that's the only subject knowledge I have there.

2 Q. Are you aware of any edits that person made to
3 PTK's Wikipedia page?

4 A. I'm not sure that I remember the edits, but I
5 believe, I believe, that -- and this is my best guess --
6 that that is the individual who added -- just added on
7 September 26th, 27th, and 28th, so in the past five
8 days, some verifiability to help verify some claims made
9 by PTK such as the notable members which didn't exist
10 before.

11 Q. Another user name -- well, I'm sorry, going
12 back to DaveMCK, have you had any communications with
13 that person?

14 A. No, sir.

15 Q. Another user name, "Headbomb," H-e-a-d-b-o-m-b.
16 Are you aware of any edits that person made to the PTK's
17 Wikipedia page?

18 A. I'm not.

19 Q. Have you had any communications with that
20 person?

21 A. No, sir.

22 Q. Another user name, "Citation Bot,"
23 C-i-t-a-t-i-o-n Bot. Are you familiar with any edits
24 that person made to the PTK Wikipedia page?

25 A. I would only be speculating, but I believe the

1 Citation Bot is a bot that is meant to improve or edit
2 citations. And I believe I saw that, but that's all
3 that I know.

4 Q. Any of these people that I've just listed here,
5 do you know whether they are administrators for
6 Wikipedia?

7 MR. LINKE: Objection as to form.

8 THE WITNESS: I don't have any knowledge to
9 that.

10 BY MR. POLAK:

11 Q. Are you an administrator?

12 A. No, sir.

13 Q. Other than Rublamb, are you aware of any other
14 administrator with responsibility for the PTK Wikipedia
15 page?

16 A. Well, it seems like View Mom Viking who had to
17 deal with the vandalism of PTK, both Coralreef78 which
18 seems to be Courtney Lane's account, which is
19 Lynn Tincher-Ladner's wife, followed by --

20 THE COURT REPORTER: I'm sorry, by whose wife?

21 THE WITNESS: Dr. Lynn Tincher-Ladner.

22 THE COURT REPORTER: Okay.

23 THE WITNESS: Followed by "MakeMyDay1918,"
24 which admittedly is the account -- self-admittedly of
25 Dr. Tincher-Ladner.

1 I understand that View Mom Viking may be an
2 administrator as well because they made their
3 independent decision to deal with the issues and what
4 they characterize, I believe, as point-of-view washing
5 and vandalism, and so I believe, to my understanding,
6 that person may be an administrator as well.

7 BY MR. POLAK:

8 Q. How do you know that Coralreef is associated
9 with Courtney Lange?

10 A. I would say that it's upon belief, and
11 discovery will answer that definitively, but it's my
12 understanding and belief that she's born in 1978 and
13 that would highly tie to her being Coralreef78.

14 Q. Any other basis?

15 A. I think discovery will show that. I don't know
16 the rest.

17 Q. So you have no other basis other than the fact
18 it has 78 in the name?

19 A. Well, also Dr. Lynn referring to her employees,
20 one of which is her own wife, which is a conflict of
21 interest of a public charity, but nevertheless, we're
22 not here to discuss that and I'm trying stay on topic
23 here, that is my basis. Yes.

24 MR. POLAK: Move to strike.

25 Could you read the question back, please?

1 THE COURT REPORTER: Yes.

2 (The last question was read back.)

3 THE WITNESS: That, and the fact that
4 Courtney Lange is an employee of PTK, which
5 Dr. Tincher-Ladner admitted that an employee made those
6 edits are the main basis of my claim.

7 BY MR. POLAK:

8 Q. Do you have any secondary bases?

9 A. At this time, those are my bases.

10 Q. Have you had any communications with Wikipedia
11 over who owns the Coralreef handle?

12 A. I don't believe so, no, sir.

13 Q. How do you know MakeMyDay1918 is
14 Dr. Tincher-Ladner's account?

15 A. Well, that's -- if I were to take her
16 declaration as truthful, then that's how I would make
17 that basis, based on her declaration.

18 Q. You used the term "washing." What does that
19 mean?

20 A. It's a term that a Wikipedia administrator used
21 to describe the changes by PTK. Whether it's a PTK
22 employee, whoever it may be, it's essentially, you know,
23 understood as point-of-view washing. So that would mean
24 pushing a one-sided agenda that could also knowingly be
25 false or misguided. And that's -- again, that's the

1 term that a Wikipedia administrator used themselves.

2 I -- I don't have anything wrong with PTK or
3 Dr. Lynn Tincher-Ladner. I just want peace and
4 protection for students, and I think we can go a long
5 way by talking. You know, we haven't had a chance to
6 speak in two-and-a-half years and that is, you know,
7 something that I seek, to open up dialogue, and I'm
8 always available for a conversation and, you know, I --
9 I -- I think that's the best way to, you know, handle
10 and bring this to an end.

11 MR. POLAK: Objection. Nonresponsive as to
12 nearly all of that. I can't remember when it started,
13 but -- but the bulk of that answer was nonresponsive.
14 BY MR. POLAK:

15 Q. And Michael, again, I've got a lot to go
16 through with you here today. You can try to shove
17 whatever you want to try to shove at these answers that
18 aren't responsive to my questions, but I will go get
19 more time if I need to, okay? I just want to make you
20 aware.

21 A. Yes, sir.

22 Q. Okay. This isn't the time to be talking about
23 settling.

24 Did we lose you?

25 A. There we go.

1 Q. You used -- well, this definition of "washing"
2 that you gave me. Is that -- can that definition be
3 found somewhere at Wikipedia?

4 I'm not asking you to go find it, I'm just
5 asking you whether it can be found.

6 A. I'm not the original user of that term, and I
7 don't know where that person got that term from.

8 Q. Is it your understanding that engaging in
9 washing, as you've defined it on Wikipedia, is
10 inappropriate or appropriate under Wikipedia's rules?

11 A. Well, to my understanding, that administrator
12 found the actions of Coralreef78, MakeMyDay1918, to be
13 that term, point-of-view washing, and that's all I know
14 about that.

15 Q. Have you ever disclosed to any moderator for
16 the PTK Wikipedia site that you are the executive
17 director for Honor Society?

18 A. Well, I think my page describes that I'm here
19 to help mitigate offering bias in the honor society
20 space and does opine on those values. I would be happy
21 to disclose that and -- yeah.

22 MR. POLAK: Objection. Nonresponsive.

23 Can you read the question back, please,
24 Ms. Langgle?

25 THE COURT REPORTER: Yes.

1 (The last question was read back.)

2 THE WITNESS: I would be happy to. I don't
3 believe that I have yet and I don't believe that I've
4 been asked to.

5 BY MR. POLAK:

6 Q. But you definitely never volunteered it, have
7 you?

8 A. Well, I volunteered a mission statement for the
9 page that was very similar to the mission of
10 Honor Society.

11 MR. POLAK: Objection. Nonresponsive.

12 Can you read the question back, please,
13 Ms. Langgle?

14 THE COURT REPORTER: Yes.

15 MR. POLAK: We're going to do this all day,
16 Michael.

17 (The last question was read back.)

18 THE WITNESS: I volunteered a statement that
19 was similar to the values of Honor Society, and that's
20 the extent to which I volunteered any information.

21 MR. POLAK: Objection. Nonresponsive.

22 Please ask -- please read the question to him a
23 third time. Hopefully he'll answer it this time.

24 THE COURT REPORTER: Okay.

25 (The last question was read back.)

1 THE WITNESS: My answer is the same as the last
2 two answers, they responded to that question.

3 MR. POLAK: Objection. Nonresponsive.

4 BY MR. POLAK:

5 Q. My question is whether you ever volunteered
6 that you were the executive director for Honor Society
7 to any moderator for the Wikipedia PTK page?

8 A. I volunteered that statement.

9 Q. That's not what I asked you, Michael.

10 MR. POLAK: So objection. Move to strike.

11 BY MR. POLAK:

12 Q. Did you ever volunteer to any moderator that
13 you were the executive director of Honor Society?

14 A. I'm going to use the restroom soon, so I don't
15 know --

16 Q. Answer the question, Michael.

17 A. I simply volunteered the statement on the about
18 page as to my background.

19 MR. POLAK: Objection. Nonresponsive.

20 BY MR. POLAK:

21 Q. I'll ask it now, I think, a seventh time, might
22 be sixth, I'm losing count.

23 Did you ever volunteer to any moderator of the
24 PTK Wikipedia page that you were the executive director
25 of Honor Society?

1 A. Sir, to the best of my ability, I've answered
2 that question and I'll answer it again that I have only
3 volunteered what was on that page and that is what I
4 volunteered.

5 Q. So is the answer no, you have never volunteered
6 to any moderator that you were the executive director of
7 Honor Society?

8 A. I haven't volunteered that I'm the curator of
9 the Honor Society museum, nor the executive director of
10 Honor Society nor any of these.

11 Although, you know, being in the cultural
12 sector, I would find that to be relevant and I would
13 disclose that. I don't have an issue with that.

14 MR. POLAK: Object to the last half of that
15 answer as being nonresponsive.

16 THE WITNESS: Okay.

17 MR. POLAK: Do you need to take a break,
18 Mr. Moradian?

19 THE WITNESS: Yes.

20 MR. POLAK: Okay. We'll take a 10 minute
21 break.

22 VIDEOGRAPHER: Okay. Stand by.

23 This marks the end of Media No. 2. Going off
24 the record at 12:42 p.m. Pacific.

25 (Off the record at 12:42 p.m.)

1 (Back on the record at 1:06 p.m.)

2 VIDEOGRAPHER: We are back on the record at
3 1:06 p.m. Pacific, and this marks the beginning of
4 Media No. 3, deposition of Michael Moradian.

5 Please proceed, Counsel.

6 BY MR. POLAK:

7 Q. You created the Wikipedia -- "WikiObjectivity."
8 Let me scratch that question, make sure it's clean.

9 You created the "WikiObjectivity" user name
10 specifically with the intention of editing PTK's
11 Wikipedia page under that handle, right?

12 A. Well -- no, I wouldn't say that's a correct
13 characterization. And I -- I think that, you know,
14 we -- the page had a description of what it does and it,
15 you know, contributes to editing and creating five new
16 Wikipedia pages, I believe, and editing about 60 of
17 them, and so PTK, to that extent, is just, you know, one
18 of probably 60 pages that this account touched.

19 Q. The first edit, though, that was made with the
20 "WikiObjectivity" user name was PTK's Wikipedia page,
21 right?

22 A. I believe that was just a cursory mark of this
23 may contain advertising, it is a rather standard
24 designation that people give articles.

25 Q. You created the "WikiObjectivity" user name on

1 April 16, 2024, right?

2 A. Yes, I believe that's right.

3 Q. How soon after April 16, 2024, did you make any
4 edits to any Wikipedia page other than PTK's?

5 A. Well, I believe it was pretty quickly, so --

6 Q. Which one --

7 A. Excuse me?

8 Q. Which one was it?

9 A. I think the creation of the Bouchet Graduate
10 Honor Society, which is a tremendous inclusive honor
11 society, came around that time. That's one that got the
12 original barnstar award.

13 There was the Honor Society caucus page that
14 didn't exist, but, you know, was a big part of honor
15 society space history. There was the page on the
16 Ku Klux Klan Honor Society, and I think all of those
17 kind of came in conjunction.

18 It's basically about, you know, identifying an
19 issue and contributing towards the partying facts,
20 objective, truths, verifiable analysis to those fields.

21 Q. But you've been using Wikipedia and making
22 edits to Wikipedia since the early 2000s. Why did you
23 wait until April 16 of 2024 to create this
24 "WikiObjectivity" user name?

25 A. Sure, I think that's a good question.

1 I think that, you know, I'm running an
2 organization, I'm very busy in my own duties, I have a
3 family. I'm not a Wikipedia editor by trade and, you
4 know, it -- I like to live by the philosophy of live and
5 let live, and that's how we've largely viewed Phi Theta
6 Kappa, you know. I never had an issue with Don nor
7 Dr. Lynn Tincher-Ladner, so I never really had a reason
8 to look into or edit or fact-check Wikipedia.

9 But, at the same time, when you're, you know,
10 dragged into a lawsuit and not that that's the main
11 contributor, but it does open your eyes to look at
12 things. You know, if -- I wouldn't, for example,
13 research you as an individual, I would have no reason
14 to, but, you know, now that we've become best buds and
15 we're talking on the regular, I would say that I've
16 googled your name and -- to learn more about it.

17 Now, if you had said something that was
18 egregiously false on Wikipedia, then it would be the
19 duty -- I didn't know you or it before, but once I
20 become aware of it, it is our duty, once you're aware,
21 to add context, add information to help make the page
22 more objective.

23 Q. Well, let's talk about the other things that
24 were happening around that time.

25 In late February, early March, you and your

1 organization issued a survey called the Community
2 College Survey, right?

3 A. Community College Honor Society Survey, that's
4 correct.

5 Q. And that survey continued to be used up through
6 mid-March, correct?

7 A. Through and beyond, yes.

8 Q. Is that same survey in some -- a reduced
9 portion of that survey continues to be in effect now,
10 right?

11 A. That is right.

12 Q. So with respect to the survey as it existed
13 back in March of this year, you recall that we had to go
14 to court to get an injunction against your use of that
15 survey, right?

16 A. I recall reading the injunction, and I don't
17 believe that it was against using surveys. It was
18 specifically on a couple of questions narrowly tailored
19 to that point and we complied to the T.

20 Q. And one of those questions that the Court
21 enjoined you from using related to a question concerning
22 Rod Risley and the sexual harassment allegations, right?

23 MR. LINKE: Objection as to form.

24 THE WITNESS: I believe one of the questions
25 did involve that, that's right.

1 BY MR. POLAK:

2 Q. And another one of the questions that the Court
3 enjoined you from doing was -- it involved a
4 embezzlement claim at Itawamba College, right?

5 MR. LINKE: Objection as to form.

6 THE WITNESS: Injunction narrowly referred to
7 that survey question, that is correct.

8 BY MR. POLAK:

9 Q. And you do recall that the Court found those
10 questions in combination with other questions that were
11 the subject of the injunction to be, in the Court's
12 word, "malicious"?

13 A. Can you repeat that?

14 Q. You do recall that Judge Reeves found those
15 questions concerning Itawamba College and Rod Risley and
16 some of the other questions to be malicious against PTK?

17 A. I believe you're conflating things, but yes,
18 the survey questions, narrowly tailored, were -- may
19 have contained that language.

20 Q. Well, I didn't ask you that, we already
21 established that the questions contained those topics.

22 My question to you is that you do recall that
23 Judge Reeves called your use of those questions in the
24 survey to be malicious?

25 A. I didn't study that in preparation for today

1 and these three topics, so I'm just trying to answer to
2 the best of my ability.

3 Q. Have you forgotten that Judge Reeves identified
4 your conduct in connection with this survey to be
5 malicious?

6 A. I -- I don't understand why you're talking like
7 that. I think you can talk in normal tone and I will
8 get the question.

9 Q. You can just answer my question, Mr. Moradian.
10 Have you forgotten that Judge Reeves found your
11 conduct as to this survey to be malicious?

12 MR. LINKE: Objection as to form.

13 THE WITNESS: I highly respect Judge Reeves and
14 the court and respect what they wrote, and I have read
15 it and I acknowledge that I have read it and to --

16 BY MR. POLAK:

17 Q. Not my question. Not my question. So I'll ask
18 it, I guess, a third time now, Mr. Moradian.

19 Have you forgotten that Judge Reeves called
20 your conduct in connection with this survey and those
21 questions in particular to be malicious?

22 MR. LINKE: Objection as to form.

23 THE WITNESS: Sir, I have not forgotten what
24 Judge Reeves said and I hold those close to me.

25

1 BY MR. POLAK:

2 Q. So you have not forgotten that Judge Reeves
3 called your conduct malicious in connection with this
4 survey?

5 MR. LINKE: Objection as to form.

6 THE WITNESS: I would have to read that
7 characterization or the quote again to confirm what
8 you're saying. I'm just doing the best I can given what
9 I know.

10 BY MR. POLAK:

11 Q. So apparently you have forgotten.

12 If he used that term, you have forgotten that
13 he used that term in connection with this order?

14 MR. LINKE: Objection as to form.

15 THE WITNESS: Well, you're asking, you know,
16 very broad things and then very narrow things and
17 switching around, but I'm trying to give you the best
18 and most truthful answer that I can.

19 BY MR. POLAK:

20 Q. And I would appreciate a truthful answer in
21 response to my question, so I'll ask it again.

22 It sounds to me that sitting here today you
23 cannot recall whether Judge Reeves used the word
24 "malicious" to describe your conduct with regard to that
25 survey.

1 MR. LINKE: Objection as to form.

2 THE WITNESS: No, sir, I have not forgotten
3 what Judge Reeves said.

4 BY MR. POLAK:

5 Q. So you do remember him calling your conduct
6 malicious in connection with the survey?

7 MR. LINKE: Objection as to form.

8 THE WITNESS: I believe so.

9 BY MR. POLAK:

10 Q. And that order was entered on March 28, right?

11 A. I will take your statement as truth.

12 Q. Okay. So you also filed your counterclaims
13 against PTK on -- or amended counterclaims against PTK
14 where you asserted these new claims concerning false
15 advertising, defamation, tortious interference,
16 antitrust on April 10th, 2024, right?

17 A. I will take your statement as true.

18 Q. Okay. So I just -- I'm trying to put in
19 context here so I understand the timing of your creation
20 of the "WikiObjectivity" user name.

21 That was done on April 16, we've already
22 established that, right?

23 A. Yes, sir, I believe so.

24 Q. And within the four-week period before that,
25 you issued a malicious survey, you got caught issuing a

1 malicious survey, the judge enjoined you from sending
2 the malicious survey, and you amended counterclaims to
3 greatly broaden the scope of claims in this suit, right?

4 MR. LINKE: Objection as to form.

5 THE WITNESS: I'm not a lawyer and I haven't
6 reviewed the whole docket in preparation of this, but I
7 will take your statements at face value.

8 BY MR. POLAK:

9 Q. So it's in that context that you want
10 Judge Reeves to believe that you created the
11 "WikiObjectivity" user name because at that point in
12 time you were just ready to start commenting to the
13 world on your knowledge about Honor Society?

14 A. Well, this is important. You can litigate or
15 you can lie, but to litigate and lie at the same time,
16 it becomes problematic. And what we're seeing from PTK
17 is, on one hand, aggressively litigate, don't even speak
18 to a party; on the other hand, boldface lie.

19 Now, I don't run Wikipedia, I don't own
20 Wikipedia. Wikipedia is a nonprofit and runs itself
21 accordingly, so to the -- I am not -- you know, there's
22 nothing I can add to Wikipedia that if its -- if its
23 authorities, if its administrators found nontruthful
24 would be removed immediately and I would be banned, but
25 you cannot sit here and say that at the same time PTK is

1 entitled to litigate and lie, you know?

2 And that's essentially what you're saying, that
3 you -- that you -- you know, PTK deserves that license
4 to lie.

5 MR. POLAK: Objection. Nonresponsive.

6 Ms. Langgle, could you reread the question for
7 the witness so he may understand it and answer it?

8 THE COURT REPORTER: Yes.

9 (The last question was read back.)

10 THE WITNESS: What part of my answer did -- did
11 you --

12 BY MR. POLAK:

13 Q. Mr. Moradian, just answer the question. You
14 didn't answer it.

15 I gave you the context of the weeks leading up
16 to April 16 when you created "WikiObjectivity" and my
17 understanding is your testimony here today is that you
18 intended to create "WikiObjectivity" so that you could
19 impart upon the world your vast knowledge to the world
20 about honor societies.

21 Is that what you want Judge Reeves to believe,
22 is that that was your purpose even though in the weeks
23 preceding, you had issued a malicious survey, you had
24 been caught issuing a malicious survey, Judge Reeves
25 enjoined you from issuing that malicious survey further

1 and you asserted broad counterclaims just a week prior
2 in this lawsuit?

3 A. I'm not sure that's a question, I'm just
4 hearing a statement.

5 Q. I'm not going to argue with you, it is a
6 question. Let's -- let's step back.

7 It is true, isn't it, that you want
8 Judge Reeves to believe that you created the
9 "WikiObjectivity" user name solely so that you could
10 impart upon the world your knowledge of honor societies?

11 A. I would want to be conveyed that you can only
12 impact -- you can only make change to something that you
13 know about. If you don't know about it, you can't say
14 something about it, and so the circumstances that cause
15 you to learn or know about something is independent of
16 what you've learned. Once you've learned it, you have a
17 duty to deal with it.

18 And I would say to Judge Reeves or any
19 interested party that leaders can come from anywhere.
20 Heros can come from anywhere. Just because you're
21 litigated does not mean you cannot stand up for the
22 rights of students and for the general public. Facts
23 are facts and Wikipedia arbitrates and determines that
24 and these are their determinations, not mine.

25 Q. When is it that you first learned of

1 Rod Risley's allegations against him?

2 MR. LINKE: Objection as to form.

3 THE WITNESS: Well, considering that I was
4 executive director of Honor Society when that happened,
5 I believe I heard about it as it happened.

6 BY MR. POLAK:

7 Q. And that happened back in what? What year?

8 A. 2015.

9 Q. So you had 2015, 2016, 2017, 2018, 2019, 2020,
10 2021, 2022, 2023, and the first three months of 2024 to
11 create edits to PTK's page, correct?

12 Simple yes-or-no question, Mr. Moradian.

13 You had the opportunity to make edits to PTK's
14 Wikipedia page in those years, correct?

15 A. Look, victims of sexual abuse can come out at
16 any time and speak out at any time. There is no, you
17 know, it has to be --

18 Q. Mr. Moradian, you are not a victim of sexual
19 abuse or harassment. These are not your claims. That
20 is nowhere near responsive to the question I asked you,
21 so I would ask you to please, please, listen to the
22 question I'm asking you and answer the question.

23 I gave a broad range of years, going all the
24 way back to 2015, so I'm going to ask it again.

25 You had the opportunity because you had the

1 knowledge of these allegations to make edits to PTK's
2 page all the way back since 2015, but you chose not to
3 do so, right?

4 A. Again --

5 MR. LINKE: Objection as to form.

6 THE WITNESS: -- this is important and I want
7 to be heard.

8 If a victim of sexual abuse comes out a decade
9 later and speaks to you, you can be an ally of that
10 victim. This is not, you know, a granular thing here.
11 People from 30, 40, 50 years ago are getting their
12 moments today and the fact that you can't acknowledge
13 these women's pain and what they've gone through as a
14 result of PTK and its leadership is indicative of the
15 issue. This is the issue that we're dealing with.

16 It's a broad-based coverup and you are the main
17 proponent of that.

18 BY MR. POLAK:

19 Q. How can it be a coverup if the articles that
20 you cited to the edits that you made to the PTK page
21 existed from 2015 and 2016?

22 A. Well --

23 MR. LINKE: Objection as to form.

24 THE WITNESS: -- the fact that you're using the
25 legal system to quash discourse of known, truthful, and

1 verifiable facts, and you're stepping on freedom of
2 speech, expression, that is exactly the issue here.

3 You know, I didn't make these articles, I had
4 nothing to do with them, but they should be weighed as
5 appropriate, you know, to any argument or discussion.

6 You know, Golden Key Honor Society has a
7 section exactly like this, and I didn't deal with that,
8 but that's their halo, and this is PTK's, and so --

9 BY MR. POLAK:

10 Q. Let's go back -- let's go back to my question.

11 If you knew about these sexual harassment
12 allegations in 2015, why didn't you edit PTK's page
13 then?

14 MR. LINKE: Objection as to form.

15 THE WITNESS: I didn't know these individuals
16 personally at that time, I didn't know their stories.
17 And this is just one story upon, you know -- one day, so
18 I wouldn't necessarily, you know -- I think what you're
19 missing is that we're a friendly organization and we're
20 not looking to hurt anybody. You know, this is not
21 about -- I wouldn't go around saying ill about anybody,
22 that's just not my nature.

23 BY MR. POLAK:

24 Q. When is it -- when is it that these women
25 approached you to tell you their story?

1 I'm sorry, that's not correct.

2 When is it that these women were approached by
3 you to tell their story?

4 MR. LINKE: Objection as to form.

5 THE WITNESS: I think we've discussed this in
6 depth in earlier depositions, but it was within the
7 course of the last two years.

8 BY MR. POLAK:

9 Q. All right. So you knew about it in 2022, but
10 you made no edits, right?

11 A. Sir, are you --

12 MR. LINKE: Objection as to form.

13 BY MR. POLAK:

14 Q. Just answer the questions, Mr. Moradian.

15 A. I'm not allowed to discuss a woman's sexual
16 misconduct when she discusses it, is that what you're
17 saying?

18 Q. Mr. Moradian, this goes so much better when
19 you'd just answer the questions that I'm asking. Rather
20 than trying to argue with me at every turn or not answer
21 the question at all. So I'm going to ask it again.

22 It is true, isn't it, that you knew -- you had
23 already contacted these women in 2022, but you made no
24 edits to PTK's page at that time?

25 MR. LINKE: Objection as to form.

1 THE WITNESS: That is true.

2 BY MR. POLAK:

3 Q. Okay. I didn't ask you why. I didn't ask you
4 why. I just asked you whether it was true.

5 So you also knew in 2023 and you made no edits
6 to PTK's Wikipedia page, right?

7 MR. LINKE: Objection as to form.

8 THE WITNESS: This litigation is not my whole
9 life. I don't sit around thinking about this every day,
10 so I don't think that, you know, I -- that is relevant.

11 MR. POLAK: Object. Nonresponsive. Ask the
12 question again.

13 BY MR. POLAK:

14 Q. You knew about it in 2023, Mr. Moradian, and
15 you didn't make any edits to PTK's page then either, did
16 you?

17 MR. LINKE: Objection as to form.

18 THE WITNESS: I don't believe so.

19 BY MR. POLAK:

20 Q. Okay. You waited until the judge found you to
21 have engaged in a malicious effort to tortiously
22 interfere in PTK's activities through this survey and
23 after you made these broad-based counterclaims to go and
24 mess with PTK's Wikipedia page, right?

25 MR. LINKE: Objection as to form.

1 THE WITNESS: May you please repeat that?

2 MR. POLAK: You can read it back, Ms. Langgle.

3 THE COURT REPORTER: Okay.

4 (The last question was read back.)

5 THE WITNESS: There's a lot to unpack there.

6 Firstly, I dispute the characterization of
7 "mess." I wouldn't -- I wouldn't use that word "mess,"
8 but to the extent that, you know, we added objective
9 information or enhanced the page, I wouldn't say there's
10 any relation to -- you know -- I mean, you're drawing
11 lines to places that I've never even heard or thought
12 about.

13 The preliminary injunction was about a survey,
14 and that was well established. You know, these facts
15 are on the internet. They're there. I didn't make this
16 up.

17 And Wikipedia is a forum for that, for notable,
18 verifiable, objective information. So I don't really,
19 you know, follow the implications that you're trying to,
20 you know, cast on me. I think it's extremely a stretch.

21 MR. POLAK: Objection. Nonresponsive.

22 BY MR. POLAK:

23 Q. You used the word "administrator" before for
24 Wikipedia. Are you familiar with the term "moderator"?

25 A. I believe I've heard that word before.

1 Q. Is a moderator different than an administrator
2 on Wikipedia?

3 A. I believe there are slight differences, but I'm
4 not an expert and I couldn't advise you on the
5 differences.

6 Q. Are you a novice editor?

7 A. Well --

8 Q. Okay. Let me -- let me ask this differently.
9 Are you aware that there are different levels
10 of editors for content on Wikipedia?

11 A. I believe so.

12 Q. One of these is called a Novice Editor, capital
13 N, capital E, right?

14 A. I'm not sure.

15 Q. Do you know whether you are considered a
16 Novice Editor?

17 A. I have no idea what the Wikipedia
18 classifications are.

19 Q. I'm going to read to you some of these other
20 classifications, and I'm going to ask you whether you
21 have achieved a status of these levels.

22 The first one is Apprentice Editor.

23 A. I have no idea.

24 Q. Journeyman Editor?

25 A. Same answer.

1 Q. Yeoman Editor?

2 A. Same answer.

3 Q. Experienced Editor?

4 A. Same answer.

5 Q. Senior Editor 1?

6 A. Same answer.

7 Q. And Senior Editor 2?

8 A. Same answer.

9 Q. Senior Editor 3?

10 A. Same answer.

11 Q. Master Editor 1?

12 A. Same answer.

13 Q. Master Editor 2?

14 A. Same.

15 Q. Master Editor 3?

16 A. Same.

17 Q. Grand Master Editor?

18 A. Same.

19 Q. Ultimate Editor?

20 A. Same answer.

21 Q. Do you know if Rublamb has reached any of those
22 levels?

23 A. In preparation for today's deposition, I
24 didn't -- was not aware that I needed to study the
25 gameified level of Rublamb. I would be happy to, but --

1 Q. No, you can just answer that question I don't
2 know. That's all you gotta tell me.

3 But you use a lot of words in responses to the
4 questions that I ask you that are meaningless, not
5 relevant, and not responsive.

6 MR. POLAK: So objection. Nonresponsive.

7 BY MR. POLAK:

8 Q. Please answer my question, do you know whether
9 or not Rublamb has achieved any of those statuses that I
10 just identified for you?

11 MR. LINKE: Objection as to form.

12 THE WITNESS: I believe he has achieved some of
13 those qualifications. I can -- I'm not qualified to
14 list them right now.

15 BY MR. POLAK:

16 Q. Are you aware that there are award levels at
17 Wikipedia?

18 A. I know that I've received the original barnstar
19 award, and that's, as a result, an award that I'm
20 familiar.

21 Q. What do you have to do to achieve a barnstar
22 award?

23 A. To my knowledge, it's basically to
24 contribute -- make a contribution that a editor or
25 moderator finds deserving of that award.

1 And yeah, I was very proud and happy, I believe
2 it was the Bouchet Graduate Honor Society and their, you
3 know, take on inclusive excellence that got me that
4 award and I'm proud of that.

5 Q. Is it this Rublamb person that gave you the
6 award?

7 A. I believe it is.

8 Q. Do you know whether he had to get permission
9 from anyone to give you that award?

10 I'm sorry, I don't know if it's a he or she.

11 Do you know whether Rublamb had to get
12 permission from anyone to give you that award?

13 A. I have no idea.

14 Q. Do you know anything about the process that
15 Rublamb has to go through to get permission to give you
16 an award?

17 A. I think it's just based on the value that you
18 add. And I know that Wikipedia prides itself on not
19 being a bureaucracy, so I can't speak to the
20 processes -- I just have no idea about how Wikipedia
21 works or determines such things.

22 Q. And you don't know anything about Rublamb other
23 than what Rublamb has posted on Wikipedia?

24 A. Well --

25 MR. LINKE: Objection as to form.

1 THE WITNESS: -- I know about his awards, his
2 contributions are public.

3 You can view his -- his or her history to learn
4 more and I think Wikipedia's self-contained like that
5 where you kind of build a reputation within the
6 community.

7 BY MR. POLAK:

8 Q. But as far as you know, Rublamb could be a
9 person working at a library or it could also just be
10 some guy living in his mother's basement eating pizza
11 while they're on the internet. You don't know?

12 MR. LINKE: Objection as to form.

13 THE WITNESS: I mean, it could be both. I
14 mean, a librarian could be eating pizza in the basement,
15 too, you know, I can't really speak to that.

16 MR. POLAK: All right. I'm going to show you
17 what's been marked as Exhibit 379, and I will go ahead
18 and share my screen with you.

19 (Exhibit 379 marked for identification.)

20 THE WITNESS: Which document? I want to pull
21 it up on this Veritext.

22 BY MR. POLAK:

23 Q. 379, but if you look at your screen, I'll show
24 it to you.

25 You had talked about the five pillars. I found

1 this on the Wikipedia website and it is a Wikipedia page
2 for the Wikimedia Foundation universal code of conduct.

3 Do you see that? Have you seen this page
4 before?

5 A. Yes, I'm looking at it right now.

6 Q. Okay. You've seen it before?

7 A. I believe I have in preparation for today.

8 Q. Yeah.

9 And they go through and they talk about this
10 universal code of conduct. Is that universal code of
11 conduct the five pillars that you were referring to
12 before?

13 A. I need a moment to refresh -- to look at this
14 document to be able to make that statement.

15 So I don't believe that these are the pillars.
16 I do see that there's talk about, you know, content
17 vandalism and abuse of power and privilege, which seem
18 to be relevant in this case, but I think that there's a
19 pillar that talk about, you know, the standards of
20 verifiability, notability, objectivity, reliability. I
21 believe that's the pillars. I don't see the pillars
22 listed here.

23 Q. Okay. You do recognize that this is a code of
24 conduct that applies to Wikipedia edits, right?

25 A. I believe so, looking at it right now, yes.

1 Q. Okay. And is this a code of conduct that you
2 hold yourself accountable to when making edits to
3 Wikipedia pages?

4 MR. LINKE: Objection as to form.

5 THE WITNESS: Probably more so than
6 Dr. Tincher-Ladner.

7 MR. POLAK: Objection. Nonresponsive.

8 Can you read the question back, please,
9 Ms. Langgle?

10 THE COURT REPORTER: Yes.

11 (The last question was read back.)

12 MR. LINKE: Same objection.

13 THE WITNESS: To the best of my ability and
14 relative to the situation and the other parties, yes.

15 BY MR. POLAK:

16 Q. Is this the code of conduct that you would
17 expect the Court to hold you accountable for in
18 evaluating your actions in editing PTK's Wikipedia page?

19 A. I would expect them to hold everybody
20 accountable to a similar standard.

21 Q. So the answer is yes, you would expect the
22 Court to hold you accountable to this standard?

23 A. I'm not sure -- again, I'm not an attorney and
24 I think you know that. I don't know what the standard
25 for the court system is. I don't even know if this is a

1 terms of service for Wikipedia. So I don't know what --
2 you know, again, you're asking me to make lawyerly
3 statements here. I can't.

4 I don't know if this is in the purview of the
5 court system, I don't even know if it's in the purview
6 of the Wikipedia system. I just know that I would
7 expect anybody who's looking at it to consider the role
8 of all of the players equally.

9 Q. Is this a standard that you hold yourself to?

10 A. I don't know. It's the same standard we all
11 look at when dealing with Wikipedia.

12 Q. What do you mean you don't know whether you
13 would hold yourself to the standard?

14 MR. LINKE: Objection as to form.

15 THE WITNESS: I believe I withhold myself to
16 the standard in accordance with how others hold their --
17 even closer enjoined to this topic hold themselves.

18 BY MR. POLAK:

19 Q. Okay. So let's go down here to a section
20 called "Unacceptable Behavior."

21 Do you see this, where I'm showing you here,
22 "Unacceptable Behavior"?

23 A. Okay.

24 Q. And the 3.3, "Content Vandalism and Abuse of
25 the Projects," do you see that?

1 A. I see that.

2 Q. Okay. Here Wikipedia says in this universal
3 code of conduct that it would be a violation if you are,
4 quote, deliberately introducing biased, false,
5 inaccurate, or inappropriate content, or hindering,
6 impeding, or otherwise hampering the creation and/or
7 maintenance of content.

8 Did I read that correctly?

9 A. I believe you read that correctly.

10 Q. So here is that word again that you said didn't
11 apply to you, "biased."

12 Do you -- are you going to change your mind
13 now, now that you've read this, and say that introducing
14 biased information onto a page would be something that
15 you shouldn't do?

16 MR. LINKE: Objection as to form.

17 THE WITNESS: If you would like to show me a
18 statement, I can speak to that statement, but I can't,
19 you know, speak in generalities, I don't even know what
20 you're talking about, what you're referring to.

21 BY MR. POLAK:

22 Q. You told me before when I asked you whether or
23 not you would believe that your edit should be unbiased,
24 you said I don't know that I would use the word "biased"
25 or "unbiased."

1 Here we see the word "biased" in the code of
2 conduct. So are you willing to hold yourself now to the
3 standard for your edits to not deliberately introduce
4 biased content?

5 A. I hold myself to a higher standard than
6 Dr. Lynn Tincher-Ladner and that's essentially what
7 matters in this instance.

8 MR. POLAK: Objection. Nonresponsive.

9 BY MR. POLAK:

10 Q. My question to you had nothing to do about
11 Dr. Tincher-Ladner.

12 A. It --

13 Q. My question to you, Mr. Moradian, had to do
14 with whether or not you are now willing to concede that
15 deliberately introducing biased content to edits to a
16 Wikipedia page violates the universal code of conduct?

17 A. Well, I don't believe that my edits were
18 biased. Nobody cited them as being biased. If there
19 are corrections needed, that corrections were made and
20 undisputed, and so to the best of my ability, we
21 imparted -- I imparted objective information for
22 Wikipedia to consider.

23 I didn't fight with them. I didn't try to POV
24 wash them. I certainly didn't vandalize the page.

25 So I've done the best of my ability to create a

1 truthful -- to contribute to a truthful, notable, and
2 verifiable environment, and that's all I can do.

3 MR. POLAK: Objection. Nonresponsive.

4 THE WITNESS: Also --

5 BY MR. POLAK:

6 Q. Mr. Moradian, my question to you, Mr. Moradian,
7 is whether you concede that deliberately introducing
8 biased content in edits to a Wikipedia page violates the
9 universal code of conduct for Wikipedia?

10 MR. LINKE: Objection as to form.

11 THE WITNESS: Can we have lunch soon? It is
12 almost 2:00 p.m. here and I'm losing track of these
13 long-winded and loaded questions, but --

14 MR. POLAK: Move to strike the sidebar and the
15 comment and the answer.

16 BY MR. POLAK:

17 Q. Mr. Moradian, answer my question, please.

18 Do you concede --

19 MR. LINKE: Objection --

20 BY MR. POLAK:

21 Q. Do you concede that the -- that deliberately
22 introducing biased content into edits on a Wikipedia
23 page violates the universal code of conduct for
24 Wikipedia?

25 MR. LINKE: Objection as to form.

1 THE WITNESS: Well, actually, let's read this
2 together. You know, because you're asking me to answer
3 something.

4 Deliberately introducing biased, comma, false,
5 comma, inaccurate or inappropriate content together,
6 comma, or hindering. That would imply that it has to
7 follow all of those to create that effect. And we know
8 that the entries were not false, inaccurate,
9 inappropriate or hindering so I don't concede that they
10 were biased, but to the extent that they were, they
11 certainly still were within the purview of being
12 acceptable contributions.

13 BY MR. POLAK:

14 Q. Do you know the difference between the word
15 "or" and "and"?

16 A. Well, it looks like they're modifying what's
17 within the commas, inaccurate or inappropriate
18 conduct -- content.

19 Q. So it's your understanding that you can be as
20 biased as you want, you can be as false as you want, you
21 can be as inaccurate or inappropriate as you want with
22 respect to content so long as you do not also hinder,
23 impede, or otherwise hamper the creation of content;
24 that's your interpretation of this provision?

25 A. Sir, I don't know why you're doing this. We

1 are both educated people. We understand what's going
2 on. I contribute to the article and it left my hands.
3 Wikipedia deemed those to be truthful and valuable
4 editions and I was awarded for making such editions to
5 Wikipedia.

6 On the other hand, your client did things that
7 were viewed as vandalism and washing and was banned.

8 So I don't know where the conversation is. I
9 don't know what point you're trying to make, but you are
10 mischaracterizing and grossly abusing the system.

11 MR. POLAK: Objection. Nonresponsive.

12 Ms. Langgle, could you reread the question for
13 the witness so he may try to answer it?

14 THE COURT REPORTER: Yes.

15 (The last question was read back.)

16 THE WITNESS: The first rule of Wikipedia is
17 that there are no rules to Wikipedia. It's about -- and
18 you can look that up. It's about making valuable
19 contributions and people seeing it as valuable and so
20 that supersedes this statement. And I know you're
21 trying to find one word and drive home a point, but I
22 vehemently disagree with the way you're conducting
23 yourself and I've answered this question five times.

24 BY MR. POLAK:

25 Q. I don't understand, Mr. Moradian, why you are

1 so reluctant to concede that deliberately introducing
2 biased information through edits violates the universal
3 code of conduct. Why can you not agree with that basic
4 statement?

5 MR. LINKE: Objection as to form.

6 THE WITNESS: Sir, whatever point you're trying
7 to drive home, you're -- you're purposely leaving out
8 the context of the fact that the page itself was
9 vandalized, it was not compliant to begin with, and it
10 was just the duty of anybody to bring that to attention.
11 Biased or not biased, Wikipedia took over and did its
12 job. That's not my job and just pointing that out is
13 not problematic.

14 BY MR. POLAK:

15 Q. One of the things it says that shouldn't be
16 done is systematically manipulating content to favor
17 specific interpretations of facts or points of view.

18 Do you agree that that's a standard that, as an
19 editor of a Wikipedia page, you should abide by?

20 A. Yeah, I did.

21 MR. LINKE: Objection as to form.

22 BY MR. POLAK:

23 Q. What was your answer, Mr. Moradian?

24 A. I spoke about Ms. Mosal and her contributions
25 to PTK. That has no benefit to anybody but PTK.

1 I spoke about Rod Risley and his contributions
2 to PTK as well as his hall-of-fame recognition with the
3 AACC and that helps nobody but PTK.

4 These -- there was no systemic manipulation.
5 This is about adding context to a page. And so I would
6 say -- and the record shows that there were many, many
7 favorable editions to the PTK page and it's just about
8 context. And you know that, I don't need to explain
9 this to you, you viewed that.

10 MR. POLAK: Mr. Moradian -- objection,
11 nonresponsive.

12 BY MR. POLAK:

13 Q. I didn't ask you about anything that you did.

14 A. You did, though.

15 Q. I'm only asking you whether or not you agree
16 that this standard applies to your edits. That is, the
17 standard is that it would be inappropriate and violative
18 of universal code of conduct for Wikipedia to, quote,
19 systematically manipulate content to favor specific
20 interpretations of facts or points of view. Can you
21 just agree with me on that?

22 MR. LINKE: Objection as to form.

23 THE WITNESS: All right. We're gonna read the
24 context, why we have a universal code of conduct.

25 We believe in empowering as many people as

1 possible to actively participate in Wikimedia products
2 and spaces to reach our vision of a world in which
3 everyone can share in the sum of all human knowledge.
4 We believe our communities of contributors should be as
5 diverse, inclusive, and accessible as possible.

6 So that is the -- the basis, the background on
7 which these code of conduct exists. And yeah, to that
8 extent, we have abided by the spirit of the code of
9 conduct.

10 MR. POLAK: Objection. Nonresponsive.

11 I'll tell you, Mr. Moradian, and I'll tell you,
12 Derek, I'm about ready to get the judge on the phone so
13 he can sit in here and listen to this nonsense where I
14 have to keep asking the same gosh-darn question every
15 time, over and over and over again.

16 BY MR. POLAK:

17 Q. My question for you, Mr. Moradian, was very
18 simple so I'm going to ask it one more time and if need
19 be, multiple more times until I get an answer and then
20 we can take a break.

21 My question for you is simply this: Do you
22 agree that this standard identified here on the page
23 that we're looking for -- looking at applies to the
24 edits that -- that you would perform to Wikipedia pages;
25 that is, that it is a violation of the universal code of

1 conduct for Wikipedia to, quote, systematically
2 manipulate content to favor specific interpretations of
3 facts or points of view?

4 MR. LINKE: Objection as to form.

5 THE WITNESS: Yes, I believe it applies to me
6 and all contributors equally, yes.

7 MR. POLAK: Thank you. We can take that break
8 now.

9 THE WITNESS: Thank you.

10 VIDEOGRAPHER: Okay. Stand by everyone.

11 This marks the end of Media No. 3, going off
12 the record at 1:57 p.m. Pacific.

13 (Off the record at 1:57 p.m.)

14 (Back on the record at 2:46 p.m.)

15 VIDEOGRAPHER: We are back on the record at
16 2:46 p.m. Pacific. And this marks the beginning of
17 Media No. 4, deposition of Michael Moradian.

18 Please proceed, Counsel.

19 MR. POLAK: All right.

20 I'm marking Exhibit 380.

21 (Exhibit 380 marked for identification.)

22 BY MR. POLAK:

23 Q. And what I'm -- I'll represent to you that this
24 is Exhibit E-3 of Dr. Tincher-Ladner's declaration that
25 you were referring to before, but, as you can see, the

1 first page is marked E-3. You can see that it was filed
2 on July 24th, 2024.

3 And you'll recall seeing this as an exhibit
4 since you told us that you reviewed Dr. Tincher-Ladner's
5 declaration in preparation for this, but I'll tell you
6 that this is a document that she tendered to the Court
7 that's titled "Phi Theta Kappa Difference Between
8 Revisions," and it shows the differences between what
9 PTK's Wikipedia page looked like as of April 8th, 2024,
10 and the revisions that were made on April 16th, 2024.

11 Do you see that where I'm making reference
12 there? There's a pink box and a green box right next to
13 each other there. Those are the -- those are the date
14 references. Do you see that?

15 MR. LINKE: Objection as to form.

16 THE WITNESS: The date, are you talking about
17 this April 16, 2024?

18 BY MR. POLAK:

19 Q. Yeah. So Wikipedia gives you the ability to go
20 look at -- to compare what Wikipedia pages look like on
21 one date versus another date, right?

22 A. I believe so, yes.

23 Q. Okay. And I'll just tell you that's what
24 Dr. Tincher-Ladner was showing here in this document is
25 a comparison of what we see in the red box, the date is

1 April 8th of 2024 against how this Wikipedia page looked
2 on April 16th of 2024. Do you see that?

3 A. Yes.

4 Q. Okay. So when we look at this, the very first
5 edit that was made here is right here in this box that's
6 below it in green and it says, "This article contains
7 content that is written like an advertisement. Please
8 help improve it by removing promotional content and
9 inappropriate external links, and by adding encyclopedic
10 content written from a neutral point of view."

11 Do you see where that's written?

12 A. Yes, I do.

13 Q. Are you the person that posted that statement
14 on the PTK page?

15 A. Yes, "WikiObjectivity" posted that and it's the
16 most purest form of discussion for a page.

17 Q. Okay. But I didn't really ask you about -- to
18 comment on it.

19 I'm just asking you, you yourself are the one
20 that posted that, right, under the user name
21 "WikiObjectivity"?

22 A. Sure, it's a call for objectivity, yes.

23 Q. Okay. So people can go put those types of
24 statements on Wikipedia pages and it is like a big siren
25 going out to people who are on Wikipedia asking them to

1 come and comment on a particular page?

2 MR. LINKE: Objection as to form.

3 BY MR. POLAK:

4 Q. Is that your understanding?

5 MR. LINKE: Same objection.

6 THE WITNESS: I wouldn't characterize it as a
7 siren. I think it's a call for an objectivity for
8 content and revision. It's a standard procedure.

9 BY MR. POLAK:

10 Q. Okay. But at minimum, the purpose of this for
11 you was to get other people to come and look at PTK's
12 website and make edits -- PTK's Wikipedia page, not
13 website, PTK's Wikipedia page and make edits?

14 A. Well, I mean, can you -- sorry, can you repeat
15 that? I just want to make sure I answer that as well as
16 I can.

17 Q. It was your intention in posting this to cause
18 other people to come to PTK's Wikipedia page and make
19 edits?

20 A. I don't think necessarily so. I think it's
21 just a chance for people to come, anybody, and to look
22 at the, again, notability, verifiability, and
23 reliability of the content and make their own judgments,
24 and it -- I think a certain percentage of Wikipedia
25 pages have this so it is not an uncommon statement.

1 Q. Have you made that type of notice on any other
2 Wikipedia page?

3 A. I believe in the history of my life, I may
4 have. I don't remember the early 2000s, but, you
5 know, anybody has a duty to step up and ask for pages to
6 conform to Wikipedia guidelines. That's the whole point
7 of the community.

8 Q. So is the answer no, you haven't put that
9 notice on any other website --

10 A. I believe --

11 Q. -- in the early 2000s?

12 MR. LINKE: Objection as to form.

13 THE WITNESS: I believe I have.

14 I believe the answer is yes, I think I have,
15 but not in the last recent period. I haven't been
16 active in Wikipedia as much as I used to be.

17 BY MR. POLAK:

18 Q. And the time period that you recall making or
19 possibly making that type of edit was back in the early
20 2000s?

21 A. That's right.

22 Q. And not at any time since then?

23 A. Not in the last -- in the period in question.
24 I don't know when the last day was, but I would say not
25 in the period in question.

1 Q. How are you defining "the period in question"?

2 A. Based on your discovery request period.

3 Q. Since 2016?

4 A. I believe, yes, it was April 2016.

5 Q. So you think you made -- okay. I just want to
6 be clear here, so the record's clear.

7 You don't recall putting this statement that we
8 see here about how the article contains content that is
9 written like an advertisement on any Wikipedia page
10 other than PTK's since January 1 of 2016?

11 A. Well, actually, there are banners like this
12 that were placed on and I helped contribute to on my own
13 inclusive excellence page on the Honor Society Caucus
14 page, so, you know, I actively contributed these
15 messages to those pages and helped edit and create it.

16 So, yeah, even the pages that I created have
17 had these messages in the time period and so they have
18 existed on those pages as well.

19 Q. But that was after April 16th of 2024, right?

20 A. I believe so, yes.

21 Q. Okay. So from January 1 of 2016 to April 15 of
22 2024, you had not placed this statement that we're
23 talking about on any Wikipedia page?

24 A. Well, I wasn't using Wikipedia to the same
25 extent. I was building a great business that I'm proud

1 of, getting married, having children, it just was not my
2 priority.

3 Q. Didn't ask you why, just need to know, yes or
4 no.

5 MR. POLAK: So I would object to that as
6 nonresponsive.

7 Please just answer the question.

8 And Ms. Langgle, if you could please repeat the
9 question.

10 THE COURT REPORTER: Yes.

11 (The last question was read back.)

12 THE WITNESS: I don't believe so.

13 BY MR. POLAK:

14 Q. What does it mean to you that content is
15 written like an advertisement?

16 A. Well, I think point-of-view washing would fall
17 under that category. One-sided, propaganda, false
18 statements, things that are unnecessarily or incorrectly
19 ambulatory towards an entity or self-praising, things
20 that, you know, one would view as differently if one
21 were to say about themselves other than a neutral site,
22 like Wikipedia is intended to be.

23 Q. Let's look at this first paragraph here that
24 I'm highlighting for you.

25 Is there anything in that paragraph that you

1 think contains content that is written like an
2 advertisement?

3 A. Well, I don't know that I can answer every line
4 item. I think to --

5 Q. Actually, you are here to do exactly that, so I
6 want to make it very clear. You are here to do exactly
7 that, so please answer my question.

8 What, in that paragraph, constitutes language
9 that is written like an advertisement?

10 MR. LINKE: Objection as to form.

11 THE WITNESS: Sure. Well, I'll try my best.

12 This really wasn't my intention, and I had no
13 intent to -- you know, I never reviewed our changes
14 section, but I would say that Phi Theta Kappa is the
15 name of the entity. You know, putting "honor society"
16 and the name in bold is implicitly endorsing this as
17 honor society, which I think is hotly contested. I
18 don't -- I think that is inherently a problem here.

19 Calling it international when community
20 colleges is only an American concept, which
21 Dr. Tincher-Ladner testified to. Sure, maybe there's a
22 base in Guam, there's one in Bermuda, but these are
23 extensions of American products. Calling it
24 international and making it seem bigger in scope some
25 would say is misleading.

1 You know, students seeking bachelor's degrees,
2 that's not true to our understanding, so I think that's
3 misleading.

4 And yeah, generally you don't jump straight
5 into your millions of members and 1300 chapter in 10
6 nations in your one-line description of Wikipedia. I
7 mean, that's just not standard practice.

8 You can look at other honor societies, so I
9 would say that that's creating an advertorial-type tone
10 to this article, but that's -- you know, you asked me
11 and I'm answering to the best of my abilities.

12 BY MR. POLAK:

13 Q. Next paragraph under "Mission," is there
14 anything in that paragraph that is an advertisement in
15 your words?

16 A. Well --

17 MR. LINKE: Objection as to form.

18 THE WITNESS: -- since you're asking me, it's
19 become apparent, you know, in the scope of discovery and
20 the scope of our conversations that Phi Theta Kappa
21 doesn't recognize high academic achievement.

22 In many cases, it's an average society or
23 below-average society, you know, reaching students in
24 the 50th percentile, 60th percentile, so I don't
25 know if that's -- just, again, you're asking me and I'm

1 giving, you know, you what you're asking for. I
2 wouldn't certainly -- you know, I'm just here to provide
3 you what you're asking, but I don't know if I would
4 classify this as a society to recognize high academic
5 achievement when they're, you know, recognizing students
6 in the 85th percentile or bottom 15 percent of some
7 schools, but that's okay.

8 To provide opportunities to help them grow as
9 scholars and leaders. Maybe that's -- maybe that's
10 okay, I'm really not in the position to judge that.

11 BY MR. POLAK:

12 Q. So -- so you're not really in a position to say
13 whether there's advertising language in this paragraph?

14 MR. LINKE: Objection as to form.

15 THE WITNESS: Well, I didn't flag anything or
16 bring any notice to it, so I -- I don't think that's in
17 contest. I don't -- you know, my job -- and you know, I
18 use that term as an individual or a person contributing
19 to Wikipedia -- is just to see if something is notable,
20 verifiable, and reliable. And you know, to that extent,
21 you're bringing up very good points that these could be
22 questionable, I just -- it's not my intent to question
23 every single thing of Phi Theta Kappa. I -- I believe
24 they can have a tremendous impact, but they need to be
25 transparent and that's it.

1 BY MR. POLAK:

2 Q. Next paragraph here, "History, Name, Origin and
3 Usage." Starting with the origin and then -- and ending
4 with "was born," is there any language in here that
5 reads like an advertisement?

6 MR. LINKE: Objection as to form.

7 THE WITNESS: Well, I would say that this
8 statement conflicts with a lot of PTK's own history and
9 own statements, so I would be worried on their behalf
10 looking at it objectively because they commonly praise
11 themselves as being the first honor society for
12 community colleges. And that is a statement that's been
13 made over and over again.

14 Here, they're actually, seems like, stepping on
15 that notion with the existence of Kappa Phi Omicron and
16 the fact that many honor societies sprang up into
17 existence prior to the existence of Phi Theta Kappa, so
18 it's just not reliable. That's the problem, either this
19 is a misstatement or PTK's other advertisements are a
20 misstatement, but to --

21 BY MR. POLAK:

22 Q. Are you saying it is untrue that Phi Theta
23 Kappa could be traced back to Kappa Omicron?

24 MR. LINKE: Objection as to form.

25 THE WITNESS: I'm not saying that. I'm saying

1 that it's not verifiable here.

2 BY MR. POLAK:

3 Q. Because it doesn't have a footnote?

4 A. Well, that's the basis of Wikipedia.

5 Q. Okay. But that doesn't make it an
6 advertisement either, does it?

7 A. Well --

8 MR. LINKE: Objection as to form.

9 THE WITNESS: Let's just look at the very last
10 words, "Phi Theta Kappa was born." You know, the tone
11 there is not an objective encyclopedic tone and somebody
12 could, you know, take exception to an encyclopedia, you
13 know, claiming, you know, this is the birth of Venus
14 here. This is just -- this is not an appropriate tone
15 for Wikipedia.

16 Again, that's for the community. I'm not here
17 to --

18 BY MR. POLAK:

19 Q. Yep. Let's look at the -- these paragraphs
20 here.

21 A. Okay. Let's start with this paragraph.

22 Q. Tell me what, in your view, reads like it is
23 content of an advertisement.

24 MR. LINKE: Objection as to form.

25 THE WITNESS: So we're looking at, you know, a

1 halo effect here where, you know, PTK is trying to use
2 the halo of Phi Beta Kappa, which has been verified
3 multiple times on multiple different verified sources
4 that there's never been a connection, they're not sister
5 societies and, in fact, in the 200 years of Phi Beta
6 Kappa, they call the name "Phi Theta Kappa" a downright
7 travesty.

8 So I mean, to -- to say that it was modeled
9 after it and modeled after this prestigious society when
10 it was literally copy and pasted or -- as you would call
11 it, a fake Rolex, you know, a fake Rolex example, a
12 knockoff.

13 And, again, I'm not saying these to hurt
14 anybody's feelings, I respect Dr. Lynn and PTK, but
15 we're just trying to look at history. This is just the
16 fact. I didn't make this up and I'm certainly not
17 propounding it, I'm just telling you what I know to be
18 the fact.

19 BY MR. POLAK:

20 Q. My question, Mr. Moradian, I'll let you finish
21 your answer, but you're not answering my question and so
22 my question to you was, what about this is -- is written
23 like the content of an advertisement?

24 But if you want to finish your answer to that
25 question, you can, but I have a different one for you

1 that might short-circuit this. Do you want to hear my
2 next question?

3 A. Let me answer, you know, I like to give full
4 answers. I don't want to cut you off or me off.

5 But -- I mean, we're talking about modeled
6 after aspects of a prestigious senior college honor
7 society. This gives the commercial impression, to my
8 knowledge, that there's some sort of either
9 relationship, some -- something from this prestigious
10 organization wears on to PTK.

11 Now, there's no relationship between the two.
12 There's a 1965 book on PTK which makes that clear, the
13 200 years of Phi Beta Kappa makes that clear, the book.
14 And, you know, Marlo calling them sister societies or
15 some third-party websites call them sister societies is
16 just false, but sorry, let me get back to the point
17 here.

18 So using the word "modeled," "prestigious" and
19 "international" is conveying a sense of authority and
20 legacy and, like, foundation, that just doesn't
21 organically exist so -- so that -- that could be argued
22 that it is creating an advertorial tone.

23 Q. So is your view that what's wrong -- what was
24 wrong with the PTK Wikipedia page as of April 16th,
25 2024, that made it written like an advertisement was

1 that it contained information that was factually untrue
2 in your view?

3 A. Well, to --

4 MR. LINKE: Objection as to form.

5 THE WITNESS: So there is some factually
6 untruths, there is some exaggerations, and there is just
7 some advertorial diction in detail, and I'm just here
8 helping you as much as I can explain, you know -- you
9 can ask a English professor, they'd be more qualified
10 and an expert in diction and detail, but just based on
11 my knowledge, yeah, there are some issues there.

12 BY MR. POLAK:

13 Q. Okay. But you're the one who put the note on
14 the Wikipedia page saying, hey, come make edits, this
15 looks like an advertisement.

16 So I'm asking you to identify for me the things
17 that read like an advertisement as opposed to just being
18 factually wrong, unless you think those two things are
19 the same.

20 A. I mean, sure. Would you like me to go through
21 the whole document?

22 Q. Well, that's what we were doing, we're going
23 paragraph by paragraph on it for you to tell me, but it
24 sounds to me as if, in this first paragraph up here, you
25 don't have any facts to show that the origin of

1 Phi Theta Kappa can be traced back to Kappa Phi Omicron
2 as being a false statement, right?

3 MR. LINKE: Objection as to form.

4 THE WITNESS: Well, even the statement as
5 written here does not credibly lend itself to saying
6 that these are the same organizations. And all of the
7 documentation that I've viewed, you know, doesn't tie
8 them back directly, and if it were the case, I'm sure
9 the screen name "MakeMyDay1910" would be more accurate
10 than "MakeMyDay1918." So -- I mean, even by implication
11 of the dates chosen, there -- there is a difference.
12 There's a reason why PTK goes to 1918.

13 BY MR. POLAK:

14 Q. Do you know who wrote the first PTK Wikipedia
15 page?

16 A. I believe it was written in early, like, 2009,
17 or approximately then, so I can't tell you.

18 Q. So are you assuming that PTK is responsible for
19 the content that is on PTK's Wikipedia page?

20 A. Well, they have admitted being responsible for
21 the content, so it only -- you know -- they have already
22 acknowledged that. It's not even a --

23 Q. Where?

24 A. In Lynn's declaration.

25 Q. You think she said that?

1 A. She did say that.

2 Q. Okay. So -- all right. Let's go down here to
3 notable members.

4 A. Wait. I'd like to finish my previous comment.

5 Q. You were done. You were done, Mr. Moradian.
6 So if Mr. Linke wants to ask you to follow up on an
7 answer you gave, he can do that later on.

8 Let's go down to notable members. We see here
9 a list of about 20 to 30 people who are identified as
10 notable members of PTK, right?

11 A. I haven't counted them.

12 Q. Well, it's -- it's not the number that matters,
13 but it's people -- it's a fairly long list of people who
14 are former members of Honor Society -- I'm sorry, former
15 members of PTK.

16 A. Looks like there are 23 by my count.

17 Q. Okay. So I was right, it was between 20 and
18 30.

19 You see where I'm talking about here on the
20 page, Mr. Moradian, right?

21 A. Right under the advertorial for Geico,
22 Enterprise, Lenovo, Dell, Hurst, Review Services,
23 Bank of America and Bartleby; is that where you're
24 referring to?

25 Q. No. It's on the screen, Mr. Moradian. Do you

1 see "Notable Members" there?

2 A. Under the advertorial content, yes, I do.

3 Q. Okay. And the very first name here is
4 Carol Browner, who is a former United States
5 Environmental Protection Agency administrator who
6 attended Miami-Dade College.

7 Do you see that?

8 A. I see that.

9 Q. You took her name off this list, didn't you?

10 A. I don't see a reference or any attempt to
11 verify her belonging on this page.

12 Q. Is that a yes-or-no question to my answer? I
13 will move to strike your answer because it was not
14 responsive.

15 A. Yes, per Wikipedia guidelines of verifiability
16 and reliability, I removed it.

17 Q. Okay. Now, because this is blue, that means
18 what? It's a link, right?

19 A. I believe so, yes.

20 Q. So you can click on that page and go learn more
21 about Ms. Browner?

22 A. I believe so, yes.

23 Q. But rather than letting the people who come to
24 the page to learn more about Ms. Browner, you just
25 deleted her from existence off of this page?

1 MR. LINKE: Objection as to form.

2 THE WITNESS: Ms. Browner has to have a
3 reference to being a member of PTK, which is notable,
4 verifiable, and objective. If there is no reference to
5 that, then there's no sense of belonging to this page.
6 It's what's called an orphan. You can't just throw
7 orphan links on pages.

8 People have -- I mean, the whole point of
9 Wikipedia is objectivity, verifiability, and
10 reliability. There is no way that me and you could sit
11 here and prove on what was on the internet that day that
12 she was a member. And if -- if it were there, I would
13 have added the reference and -- if I had found it and
14 let it be.

15 BY MR. POLAK:

16 Q. And so every single person listed on this
17 "Notable Members" portion of the website that did not
18 have a note like that, that I'm showing you, a number 13
19 for Evan Edinger, you deleted it?

20 MR. LINKE: Objection as to form.

21 THE WITNESS: It's inappropriate Wikipedia
22 content to be there until it is verifiable. And so
23 based on Wikipedia guidelines, I noted that and removed
24 it per guidelines.

25

1 BY MR. POLAK:

2 Q. So the answer to my question is yes, you
3 removed it because it didn't have a footnote on it?

4 MR. LINKE: Objection as to form.

5 THE WITNESS: I just answered that question.
6 Would you like me to answer it again?

7 BY MR. POLAK:

8 Q. I would like you to just answer the question.
9 So it's true, isn't it, that you deleted every
10 name of every person under this "Notable Members"
11 section that did not have a footnote, yes or no?

12 MR. LINKE: Objection as to form.

13 THE WITNESS: Per Wikipedia guidelines, it
14 should never have been listed on this page. They have
15 to be verified and reliably verified. And that's the
16 strength of the community of Wikipedia.

17 If something doesn't belong there, it's
18 supposed to be removed. That's the duty of anybody
19 viewing the page.

20 MR. POLAK: Objection. Nonresponsive.

21 Ms. Langgle, could you please read the question
22 for Mr. Moradian to answer?

23 THE COURT REPORTER: Yes.

24 (The last question was read back.)

25 MR. LINKE: Same objection.

1 THE WITNESS: Yes, per the guidelines of
2 Wikipedia, notability, verifiability, and reliability,
3 they should be removed and were removed.

4 BY MR. POLAK:

5 Q. Did you make any effort to determine whether or
6 not there are documents out there that would evidence
7 Carol Browner's membership in PTK?

8 MR. LINKE: Objection as to form.

9 THE WITNESS: In fact, I did.

10 BY MR. POLAK:

11 Q. You searched for that?

12 A. Yes.

13 Q. You didn't find any?

14 A. At that time, on the internet, there were no
15 sources. It has come to my attention they have been
16 added since, but the time spectrum doesn't work like
17 that. At that moment, there was no verifiable point on
18 the internet.

19 Q. How did you search for that?

20 A. I typed in Carol M. Browner, Phi Theta Kappa,
21 as well as Phi Theta -- basically copy/pasted this into
22 Google with the term Phi Theta Kappa and PTK to see if
23 anything can come up that will point me in that
24 direction.

25 Q. Did you keep any record of those searches?

1 A. I mean, I don't know if a Google search is
2 something that's documented, so I don't know if that
3 record exists.

4 Q. Did you engage in internet research on all of
5 these other names that you deleted to determine if there
6 was a reference to these people as being a member of
7 Phi Theta Kappa?

8 MR. LINKE: Objection as to form.

9 THE WITNESS: I believe -- I believe I did, I
10 believe I looked at every page of theirs on Wikipedia
11 and googled them, but I have to be clear that there's no
12 requirement or need to do that. The lack of a footnote
13 is really all that's required.

14 BY MR. POLAK:

15 Q. Would you say that you made a comprehensive
16 search for data that existed on the internet that would
17 show that these people who you deleted had a
18 relationship with Phi Theta Kappa?

19 MR. LINKE: Objection as to form.

20 THE WITNESS: I think the word "comprehensive"
21 is vague, but I will say I put an effort to try to
22 confirm who I could and the people that were verified
23 were untouched because they followed the Wikipedia
24 guidelines of verifiability and notability and
25 reliability.

1 To the ones that I could not determine that,
2 you know, the -- again, the whole existence of Wikipedia
3 is built on this concept and so it would be
4 inappropriate to have all of these people listed with no
5 links.

6 BY MR. POLAK:

7 Q. How much time did you spend editing these
8 notable members at PTK on -- the first time, the first
9 time that you removed them?

10 MR. LINKE: Objection as to form.

11 THE WITNESS: I can't remember the exact amount
12 of time. I can tell you that I familiarized myself with
13 what's acceptable in Wikipedia and I clicked on all of
14 the individuals, I looked for references. The ones that
15 had references were compliant with the terms and I let
16 them be. And the ones that weren't compliant, I noted
17 as such in the modification in part to ask for
18 verification.

19 I mean, that's the whole point of flagging,
20 flagging an issue is that it gives a call to action,
21 hey, if you see something that I'm missing, please step
22 in and add it. And you know, to her credit, Dr. Lynn
23 Tincher-Ladner has realized that come to her knowledge
24 and put on the Phi Theta Kappa page, but it didn't --
25 simply didn't exist back then.

1 And even that, you know, just to be clear,
2 would be problematic because that's a first-party
3 footnote. It would be what you would call a conflict of
4 interest, but -- and bias, of course, but it's better
5 than nothing, you know, the fact that there's nothing --
6 I mean, we could be talking about dinosaurs being
7 members of PTK. We could be talking about
8 Michael Jackson and that wouldn't do any good for the
9 general public.

10 The general public needs to know that what's in
11 an encyclopedia is reliable and verifiable.

12 MR. POLAK: Objection. Nonresponsive.

13 Ms. Langgle, could you please read the question
14 back so Mr. Moradian can answer it.

15 THE COURT REPORTER: Yes.

16 (The last question was read back.)

17 THE WITNESS: I didn't remove them the first
18 time that I saw them not being compliant. That was the
19 whole point, we put out a message and I didn't make any
20 changes. I probably spent 20 minutes or so researching
21 these individuals and I didn't do anything.

22 BY MR. POLAK:

23 Q. Well, ultimately you did remove their names,
24 right?

25 MR. LINKE: Objection as to form.

1 THE WITNESS: Well, because they're not
2 compliant with Wikipedia terms.

3 BY MR. POLAK:

4 Q. So the answer is yes, eventually you did remove
5 their names?

6 MR. LINKE: Objection as to form.

7 THE WITNESS: As I've stated, yes, because
8 they're not compliant with Wikipedia terms of service.

9 BY MR. POLAK:

10 Q. So when you did that, did you spend any extra
11 time researching their names?

12 MR. LINKE: Objection as to form.

13 THE WITNESS: I spent -- yeah, a considerable
14 amount of time, frankly, because I was shocked,
15 confused, and flabbergasted, you know, how a society
16 like this -- I used to think PTK was legitimate, you
17 know, so -- so I guess I was equally duped as everybody
18 else, but -- but that was my understanding at the time.

19 And so I didn't really seek to change or
20 dismantle anything, but as time goes by and more and
21 more minutes were spent on each person and hours are
22 spent viewing this page and hours were spent, I mean, it
23 became apparent that it's just simply not an
24 encyclopedic objective article.

25 MR. POLAK: Objection. Nonresponsive.

1 Ms. Langgle, would you please read the question
2 for Mr. Moradian so that he may try to answer the
3 question.

4 THE COURT REPORTER: Yes.

5 (The last question was read back.)

6 THE WITNESS: Yes.

7 BY MR. POLAK:

8 Q. How much more time over the original 20 minutes
9 did you spend researching their names?

10 MR. LINKE: Objection as to form.

11 THE WITNESS: Probably another 45 minutes.

12 BY MR. POLAK:

13 Q. How confident are you of that number?

14 A. It's my best estimate.

15 Q. And that investigation was Google searches; is
16 that right?

17 A. To the best of my knowledge, yes. As well as
18 searches of the PTK website which used to have a search
19 box, so I did search PTK website as well, but that
20 search box doesn't exist anymore so it would actually be
21 harder now, but those are the two steps I took.

22 Q. You eventually added a name to the PTK notable
23 members, right?

24 A. I believe so, yes.

25 Q. Who was that?

1 A. Thomas Matthew Crooks.

2 Q. What is he famous for?

3 A. Well, for being a PTK member.

4 Q. You think he's famous for being a PTK member?
5 Really?

6 A. Well, again, notability, this is about a
7 notable member section, so he's notable for what's in --
8 put in the topic there, which was attempted Donald Trump
9 assassin, but he is a notable member. There's no two
10 ways about that. I mean, there are -- national
11 large-scale articles that covered it.

12 Q. What relevance did his PTK membership have to
13 his fame?

14 A. Well, the same thing could be asked about
15 Carol Browner.

16 MR. POLAK: Mr. Moradian, objection.
17 Nonresponsive.

18 Please answer my question.

19 Ms. Langgle, would you please read the question
20 back for the witness.

21 THE COURT REPORTER: Yes.

22 (The last question was read back.)

23 THE WITNESS: Sure. He is a -- he was a
24 community college student at the time. And the
25 prevailing sentiment of studying him was his community

1 college associations, one of which was Phi Theta Kappa,
2 it was viewed notable, reliable, and relevant by media
3 sources, and that's how it got its coverage and
4 notability.

5 BY MR. POLAK:

6 Q. You think his PTK membership was populated into
7 media sources?

8 A. Well, if you look at the footnotes, which I
9 assume you have, you would see that it was.

10 Q. Did you think it was funny to attach
11 Mr. Crooks' name to the PTK Wikipedia page while you
12 were deleting famous astronauts, notable government
13 officials, scientists, people of importance, did you
14 think that was funny?

15 MR. LINKE: Objection as to form.

16 THE WITNESS: Not at all. And I think we
17 covered how Wikipedia works. It's simply, again, about
18 verifiability, reliability, and notability. And you
19 know, we don't get to choose who has those attributes
20 and who doesn't. It's up to the general public to reach
21 that consensus and to protect the integrity of
22 Wikipedia.

23 And so I don't -- I think it's disturbing that,
24 you know, you're putting forth such an -- you know, dark
25 image as to, you know, how Wikipedia works. I mean,

1 this is just the nature of objectivity, notability, and
2 verifiability.

3 BY MR. POLAK:

4 Q. Did you go out and do any searching for notable
5 members of PTK that were not listed on the page
6 originally? Other than -- other than Mr. Crooks, of
7 course, who you did add.

8 MR. LINKE: Objection as to form.

9 THE WITNESS: Yes.

10 BY MR. POLAK:

11 Q. You did?

12 A. Yes.

13 Q. Did you find any?

14 A. Yes.

15 Q. Who?

16 A. Dr. Margaret Mosal, who was the original
17 executive director and founder made the page due to my
18 studies and research.

19 Further, Dr. Rod Risley who, you know, deserves
20 a lot of credit for taking PTK from a small
21 back-of-a-hardware-store organization into what it is
22 today, or what it was, is notable and, you know, he made
23 the page. And those are just two examples of people
24 that objectively deserve to be in the history of
25 Phi Theta Kappa. They are the history of Phi Theta

1 Kappa. They were researched and cited and added and
2 that's to the credit of Phi Theta Kappa and their
3 history.

4 Q. Who else?

5 A. Well, those are some of the main ones.

6 Q. Well, that's two, that's two. That's not some,
7 that's two, that's a couple.

8 A. That's a lot.

9 Q. Did you identify in your research any other
10 notable members of PTK?

11 A. Sir, I'm not aware any notable members of PTK
12 other than Rod Risley, Margaret Mosal, and those are the
13 ones that I added. If it were to come to my attention,
14 which we haven't -- just simply haven't seen, then I
15 would add them if that were the task in front of me.

16 Q. But, Mr. Moradian, you told me that you
17 searched for other notable members and those are two
18 that you added, so I'm asking you in the search that you
19 did, did you identify any other notable members of PTK?

20 A. No, sir, I'm not aware of any other notable
21 members.

22 Q. So this -- this search that you did only
23 uncovered two notable members of PTK?

24 MR. LINKE: Objection as to form.

25 THE WITNESS: Well, there was only three or

1 four that were confirmed notable so it's a 50 percent
2 addition, so I think that is a large addition to what
3 was already verified for PTK. So I think that's a lot,
4 50 percent addition of --

5 BY MR. POLAK:

6 Q. Well, it's 50 percent addition only because you
7 deleted the other 20.

8 A. Again, it's not because I deleted them, it's
9 because they weren't up to Wikipedia guidelines to be
10 there.

11 Q. So how long -- well, were you looking for these
12 other notable members of PTK during the 40-, 45 minutes
13 or so that you identified before when you were
14 researching these existing people?

15 A. No.

16 MR. LINKE: Objection as to form.

17 BY MR. POLAK:

18 Q. What's that?

19 A. Negative.

20 Q. How much time did you spend looking for other
21 notable members of PTK?

22 A. Probably between a hundred to a thousand hours.

23 Q. A hundred to a thousand hours?

24 A. Yes.

25 Q. Well, was it closer to a hundred or was it

1 closer to a thousand?

2 A. Closer to a thousand.

3 Q. Okay. When did you start that process?

4 A. Predominantly in the last two years.

5 Q. Okay. So this was not a part of your efforts
6 in April of 2024, it predated it?

7 A. That's right.

8 Q. Why have you been engaging in that research of
9 all of those other notable members of PTK?

10 A. To try and understand what PTK really is.

11 Q. Or were you trying to find people like
12 Mr. Crooks who tried to kill the president? And you
13 could --

14 MR. LINKE: Objection.

15 BY MR. POLAK:

16 Q. -- put in things and use them in this
17 litigation to malign PTK; wasn't that really what your
18 intention was?

19 MR. LINKE: Objection as to form.

20 THE WITNESS: Sir, I have -- I vehemently
21 disagree with that assessment, and I find it insulting
22 to say that I would do that.

23 That was a top-of-the-world article that PTK
24 was in, in the subject line at that time that it
25 occurred live, and to say that there was something other

1 than reporting the facts, the notable, verifiable,
2 reliable truth is just misrepresentation.

3 BY MR. POLAK:

4 Q. I'm going to show you Matthew Crooks' -- you
5 know, we're live on the internet right now on this and I
6 went to Matthew Crooks' Wikipedia page.

7 Have you ever been to Matthew Crooks' Wikipedia
8 page?

9 A. Yes, I have.

10 Q. Now, down here it talks about his early life
11 and education. And because you've read his Wikipedia
12 page, you already know that there is no reference at all
13 to Phi Theta Kappa here, right?

14 A. Well, there is a reference to the National
15 Technical Honor Society that is notable there. You see
16 that as plain as I do, and you'll also note that this
17 page is blocked from editing so a lot of people can --
18 no, not that one, National Technical Honors.

19 Q. This one right here, the National Technical --
20 why is that important to you?

21 A. It's the same context which PTK is involved and
22 covered. And to an extent, PTK's involvement in his
23 early life and education could be argued to be higher
24 than NTHS. So, you know --

25 Q. What do you know about the National Technical

1 Honor Society?

2 MR. LINKE: Objection as to form.

3 THE WITNESS: Well, it's the National -- it's
4 called the National Technical Honor Society. They serve
5 two-year students since the 1980s, mostly at technical
6 colleges. They have lax standards of admissions similar
7 to PTK. They're not members of the ACHS similar to PTK.
8 Their colors are purple and white.

9 Thomas Matthew Crooks was also a member of
10 National Technical Honor Society.

11 BY MR. POLAK:

12 Q. Okay. You seem to know quite a bit about the
13 organization.

14 A. Off the top of my head, though --

15 Q. Have you -- let's just jump to that.

16 Here is their Wikipedia page. Have you ever
17 made any edits to this, this page?

18 A. Yes, I have.

19 Q. What edits did you make?

20 A. We also -- I also added a notable coverage of
21 Mr. Crooks.

22 Q. Really? Because I go down here to
23 "Notable Members," he's nowhere to be seen.

24 A. Well, why don't we click "view history"
25 together.

1 Q. Up here?

2 Is this the change you're making here? I only
3 see you here as "WikiObjectivity" right here.

4 What button do I need to press to see what
5 change you made?

6 Mr. Moradian, what button do I need to press in
7 order to see what change you made here at this -- this
8 one?

9 A. This part of Wikipedia, I'm not representing
10 myself, but I think if you click --

11 Q. This is where you told me to go.

12 MR. LINKE: Objection as to form.

13 BY MR. POLAK:

14 Q. Well, let's look here, let's look at the
15 previous. Actually, no, let's look at contribs, I think
16 this will tell us, won't it? No, that's not right.
17 Let's look at this.

18 I don't see anything in here, let's go back,
19 let's go down here. Well, Mr. Crooks, are you sure you
20 added Mr. Crooks to this web -- this Wikipedia page?

21 A. Yeah, why don't we go back --

22 MR. LINKE: Objection -- objection as to form.

23 THE WITNESS: Yeah, let's go down. What dates,
24 if you remember offhand, since we're on the topic of
25 Mr. Crooks, what date did that incident occur?

1 BY MR. POLAK:

2 Q. The incident occurred where he tried to kill
3 the former president?

4 A. Can you please remind us off that?

5 Q. I do not remember the date off the top of my
6 head, but I believe it was probably in June or July of
7 this year.

8 There is only one change that is identified
9 here from WikiObjectivity.

10 A. Why don't you click on the time and date to the
11 left, yeah. And there's Mr. Crooks.

12 Q. So are you the one -- you claim to be the one
13 that put that there?

14 A. Well, we just reviewed it together. It's
15 objective, it's reliable, it's verifiable and --

16 Q. No, this doesn't tell me that you're the one
17 that did it, this just tells me that it was there.

18 A. If you would like, we can take a break and you
19 can investigate and confirm that, but I'm telling you
20 right now that's what happened.

21 Q. Okay. Well, you've never gone back to put him
22 back on here, have you?

23 MR. LINKE: Objection as to form.

24 THE WITNESS: I'm not -- listen, I'm not the
25 policeman of Wikipedia. This is not my job. You know,

1 I'm just here trying to add what I can, where I can,
2 however I can to make Wikipedia a more notable,
3 verifiable and reliable place. And --

4 BY MR. POLAK:

5 Q. Well, let's talk about that then, Mr. Moradian.
6 Because with respect to the names that you deleted, it's
7 true, isn't it, that PTK tried to put them back up,
8 right?

9 A. Without verification and notability.

10 Q. So the answer is yes, you knew PTK tried to put
11 them back up, right? It's just a yes-or-no question,
12 Mr. Moradian. You knew that PTK tried to put them back
13 up after you deleted them?

14 MR. LINKE: Objection as to form.

15 THE WITNESS: Please don't ask loaded questions
16 and then just say yes or no --

17 BY MR. POLAK:

18 Q. It is not loaded, Mr. Moradian. It is a simple
19 yes-or-no question. You knew that PTK tried to put
20 those names back up after you deleted them, right?

21 MR. LINKE: Objection as to form.

22 THE WITNESS: I -- what I know, to answer your
23 question, is that when they were added back, they did
24 not have any notability, verifiability or reliability
25 added to them. And somebody, I believe it was Viewmont

1 Viking, or somebody else, took exception to that as
2 well. So to answer your question, yes, to the extent
3 that it did not comply with the Wikipedia guidelines.

4 BY MR. POLAK:

5 Q. So this back and forth that happened in
6 connection with these names, when you took them down and
7 PTK tried to put them back up, did you have any role to
8 play with those names being re-removed from the
9 Wikipedia page?

10 MR. LINKE: Objection as to form.

11 THE WITNESS: To the best of my knowledge, I
12 believe the response is they were added multiple times
13 back by PTK without verification. I believe -- which
14 the -- the record speaks for itself, by the way, so
15 there is no need to ask me this question, but the record
16 shows, I believe, that one time I did assist and the
17 rest of the times I did not.

18 BY MR. POLAK:

19 Q. What is it that you did to assist?

20 A. Essentially when there is, you know, in order
21 to protect Wikipedia, if there is an undue change,
22 you're allowed to click the undue button to protect it
23 from vandalism and POV washing, among other things.

24 Q. When you click the undue button, what
25 disappeared that PTK had put up?

1 A. Well, it would be whatever in that context that
2 was added that was not compliant with Wikipedia.

3 Q. So if they added all the names back, you're the
4 one that deleted them all the way off again, right?

5 MR. LINKE: Objection as to form.

6 THE WITNESS: That's not right.

7 BY MR. POLAK:

8 Q. Tell me where I'm wrong.

9 A. I believe ultimately Viewmont Viking, or a user
10 to that name, did that.

11 Q. I'm not talking about that instance, I'm
12 talking about the instance that you've already
13 identified for me where you were the one who hit undo
14 for what PTK did.

15 A. Sir, as clearly as I can possibly state, I have
16 explained it. I said, yes, one time where the answer
17 was not appropriate or not in compliance with Wikipedia
18 I did click it. And the rest of the times it was the
19 Wikipedia community at large that did it. That's --

20 Q. Which you -- which you invited to the page when
21 you put that post on there about how the page was an
22 advertisement?

23 A. Well, firstly --

24 MR. LINKE: Objection. Objection. Objection
25 as to form.

1 THE WITNESS: I don't believe that that was on
2 the page any longer, firstly. So that alert that you're
3 misattributing, you know, the time continuum here, there
4 was no banner as you called it, it was just -- there was
5 nothing of that affect.

6 The Wikipedia community is a self-monitoring
7 and self-policing community that stands for
8 verifiability, reliability and notability. And they --
9 they remove things that are not compliant and they
10 sometimes incorporate and edit things that could be
11 compliant. And so to that effect, it's all in their
12 hands, it's all in the hands of Wikipedia foundation and
13 their administrators, moderators and contributors.

14 BY MR. POLAK:

15 Q. So you don't dispute that you were part of the
16 back and forth that was going on after your initial set
17 of changes, where PTK was trying to put content back on
18 to the Wikipedia page that you had deleted, right?

19 MR. LINKE: Objection as to form.

20 THE WITNESS: As I've stated, and the record
21 itself shows, I was involved in protecting the Wikipedia
22 community. And to that extent, as I stated, I was
23 involved once and not involved other times.

24 BY MR. POLAK:

25 Q. Isn't it true you really were just trying to

1 make a point in this case, in this lawsuit?

2 MR. LINKE: Objection as to form.

3 THE WITNESS: Absolutely not. I think, if
4 anything, just the opposite. You know, I'm trying to
5 bring us together, to bring out the truth and to show
6 what's -- what's real and what's good in people.

7 You know, Margaret Mosal dedicated her life to
8 PTK and she was just removed. Rod Risley dedicated his
9 life to PTK and built it into what it is today. He's
10 the one that got them the Mississippi land grant and
11 this colonial style manor that Lynn resides in work wise
12 today. It wasn't Lynn's doing. And Rod Risley deserves
13 the credit of the work that he put in.

14 And, you know, you -- you're throwing the baby
15 out with the bath water here. And I'm trying to uplift
16 the truth, uplift the reliable facts, the notable facts
17 and verify. Things have to be verified, that's the way
18 that the world works. That's the way that Wikipedia
19 works. And I would like to believe that, you know, the
20 court system works that way too, you know, I had -- so
21 that -- I mean, truth is truth.

22 BY MR. POLAK:

23 Q. Why is it you weren't interested in the truth
24 from 2016 to 2023?

25 A. I'm --

1 MR. LINKE: Objection. Objection. Objection
2 as to form.

3 THE WITNESS: So part of my -- sorry, can you
4 repeat the question?

5 BY MR. POLAK:

6 Q. Why is it you weren't interested in the truth
7 from 2016 to 2023? You waited until after you got hit
8 with an injunction, the judge called you malicious, the
9 survey got enjoined, you filed all these extraordinarily
10 broad counter claims. You do all that, and you don't
11 start making changes to anything until after that
12 happens. Why were you not interested in the truth in
13 the eight years before?

14 MR. LINKE: Objection as to form.

15 THE WITNESS: That's just categorical
16 mischaracterization here. HonorSociety.org was founded
17 to bring forth the truth. It was founded to bring forth
18 a correct and remediate all these issues in the honor
19 society space. The Honor Society museum was founded to
20 preserve and enhance the legacy of honor societies for
21 good and for worse. You know, there -- there are many
22 great things that honor societies have done and there
23 are many black eyes.

24 You know, there -- there's been systemic
25 inequities, structural racism, sexual indecency in the

1 case of PTK. And we're just talking facts here. And,
2 you know, there's been a lot of abuse, you know, both
3 from embezzlement, some would say private inurement,
4 misusing nonprofit status. I mean, these are just
5 things off the top of my head, but the point is our
6 existence set out to correct these things. We have been
7 advocates from the beginning. Wikipedia is not the only
8 place to advocate for truth.

9 BY MR. POLAK:

10 Q. All right. I'm going to show you what's been
11 marked as Exhibit E-7 -- I'm sorry, it's not
12 Exhibit E-7, it is Exhibit 381. This is also
13 Exhibit E-7 to Dr. Tincher-Ladner's declaration that was
14 submitted with the court.

15 (Exhibit 381 marked for identification.)

16 THE WITNESS: Are we going to have a bathroom
17 break soon? Would you like to take it now? I can go
18 five minutes, however you feel.

19 MR. POLAK: Brandon, what time did we start
20 this session?

21 VIDEOGRAPHER: 2:46 p.m. Pacific. 2:46.

22 MR. POLAK: Yeah, we can do that.

23 THE WITNESS: Thank you.

24 VIDEOGRAPHER: So right now, correct?

25 MR. POLAK: Yeah, sorry. We can go off the

1 record?

2 VIDEOGRAPHER: This marks the end of Media

3 No. 4. Going off the record at 3:51 Pacific.

4 (Off the record at 3:51 p.m.)

5 (Back on the record at 4:06 p.m.)

6 VIDEOGRAPHER: We are back on the record at
7 4:06 p.m. Pacific. This marks the beginning of Media
8 No. 5, deposition of Mr. Michael Moradian.

9 Please proceed, Counsel.

10 BY MR. POLAK:

11 Q. I'm going to put Exhibit 381 up on the screen
12 for you. And there is an exhibit sticker. Again, this
13 is Exhibit E-7 to Dr. Tincher-Ladner's declaration,
14 which you said you reviewed prior to today in
15 preparation for the deposition.

16 This document was -- basically it was a capture
17 of an internet site on Wednesday, July 24. And the
18 internet site was PTK's Wikipedia page, so just to give
19 you a frame of reference of what this document is.

20 I want to go down to this section that became a
21 matter of controversy, I think, between you and PTK and
22 your changes. And I'm going to start here, and it is
23 titled controversies and misconduct.

24 Do you see that?

25 A. I see that.

1 Q. Do you recall making edits to PTK's Wikipedia
2 page in this section called controversies and
3 misconduct?

4 A. Well, I see about 20 references in this section
5 of notable, verifiable third party resources. I do
6 think that I contributed to some of this section, namely
7 in the verifiable and notable linkage.

8 Q. Okay. So this first sentence, in 2024, the Phi
9 Theta Kappa entered into two lawsuits over false
10 advertising, attempted monopoly, and trade dress. Is
11 that your language?

12 A. I can't sit here and say definitively that I
13 know, but I believe it's -- it's a true statement
14 however you read it. And I know that this page was
15 updated by Wikipedia within the hour or two of when this
16 screenshot was taken to conform to their policies,
17 namely Rublamb and the moderators and administrators
18 promptly wrote it as they see fit.

19 Q. Okay. So you're here to testify about the
20 changes that you made to this web page. And you can't
21 tell me whether this is your language?

22 MR. LINKE: Objection as to form.

23 THE WITNESS: Well, if you want me to go and
24 look at the history or the history which you have in
25 front of you, we could definitively tell that. But

1 you're asking based on my memory and I don't want to
2 guess.

3 BY MR. POLAK:

4 Q. Okay. Here we go. Where do you want -- where
5 do you want to look?

6 A. Please click view history. And I can't
7 instruct exactly, but you can find -- highlight the
8 section of who -- when that appeared.

9 Q. I don't -- well, I don't know when it appeared.
10 I'm asking you whether it was your language or not?

11 A. Well, I think we all know when it appeared
12 because it's in the record here. So I could either
13 refer you to view the record or we can sit and audit it
14 together. Let's see --

15 Q. I -- you're here to tell me what edits it is
16 that you made and when. Are you telling me you're not
17 prepared to tell me what edits you made and when?

18 MR. LINKE: Objection as to form.

19 THE WITNESS: That's not correct. I am here
20 and I am prepared.

21 BY MR. POLAK:

22 Q. Okay, so tell me, when did you make -- is that
23 language yours that we looked at?

24 MR. LINKE: Objection as to form.

25 THE WITNESS: Can I use my web browser to

1 confirm that?

2 BY MR. POLAK:

3 Q. What do you need to do to confirm -- to look
4 at, to confirm?

5 A. I need to click on the WikiObjectivity links,
6 the dates or -- I guess the contribs section to see
7 which one has that in -- in green.

8 Q. Okay. Revision history here.

9 A. Okay. On the PTK page, so if you -- yeah.

10 Q. Okay. You want to go to contribs, this button?

11 A. Yes, please.

12 These are the contributions to all of the
13 different pages, so you can see there's quite a bit, but
14 I didn't mean to bring you here. Let's see, let's go
15 back and look at PTK --

16 Q. What is this green -- what is this green
17 number?

18 A. I believe -- my understanding it's the number
19 of characters that were either added or subtracted from
20 the page.

21 Q. Okay. So this one right here, does this show
22 something that you wrote? You undid the revision of
23 that number by this user, Makemyday1918 for POV washing
24 and vandalism. And you say that they're circumventing
25 the Wiki ban. And you also say that Makemyday1918 is a

1 company representative. Is that your language?

2 A. So from the term POV washing until subvert the
3 page to an advert is my language. The parts before that
4 and after that are just Wikipedia conventions.

5 Q. Okay. So we were looking before at what you
6 needed to look at to be able to tell me what was your
7 language or not on that -- in that section. What is it
8 that we need to go look at in order to determine that?

9 A. We can do that together by simply -- I'm not
10 sure which link to click, but you can see on the PTK
11 view history, where that page shows up, that line shows
12 up as green, green meaning that it was an addition.

13 Q. Where do I need to look at to get that?

14 A. Up to the PTK Wikipedia page. Now click view
15 history, please. Now let's go down to find
16 WikiObjectivity. I wouldn't -- I wouldn't suggest this
17 one because we've established that was simply an undue,
18 a reversion, so let's look for a different copy.

19 That only has 36 characters, so it's also
20 unlikely. That's another reversion by Coralreef, so
21 it's probably not that, so we'd have to -- I'm trying my
22 best to help you here. It looks like -- these are all
23 newer changes, right? So you're looking at -- yeah.
24 Well, it looks like if you click on the current for one
25 of these ones that referenced lawsuit, it may have

1 something.

2 Q. What do I got to do now to help you remember
3 what the edits that you made?

4 MR. LINKE: Objection as to form.

5 THE WITNESS: Well, it looks like there was a
6 reversion of community being capitalized or not
7 capitalizing. Let's keep going down, please.

8 BY MR. POLAK:

9 Q. We were talking about that section at the
10 bottom of the page. These are notable members.

11 A. No, I think it's here somewhere.

12 Q. Okay. This is in February 2024 -- okay, in --
13 this is the language we were looking at before, in 2024,
14 Phi Theta Kappa entered into two lawsuits, right? So we
15 were looking at this here. In 2024, Phi Theta Kappa
16 entered into two lawsuits, right? So we see here that
17 language.

18 A. And the links to the notable coverage,
19 including PTK's own coverage, that's correct.

20 Q. Does this refresh your memory as to whether you
21 are responsible for this language being here as of
22 July 24, 2024?

23 A. Yes, I believe it does help refresh my memory.

24 Q. Okay. And what do you believe to be the case?
25 Are you the person that wrote this language that we're

1 looking at here, starting within 2024?

2 A. Narrowly referring to that line, I believe I
3 did write it and I believe I sourced two --

4 Q. Okay.

5 A. -- verifiable resources to confirm what was
6 written.

7 Q. Okay. So let's go through this real quick. In
8 2024, did this lawsuit start in 2024?

9 A. Well, the lawsuit --

10 Q. It's just a yes-or-no question, Mr. Moradian.
11 Did the lawsuit start in 2024?

12 MR. LINKE: Objection as to form.

13 THE WITNESS: The answer is in part yes and in
14 part no.

15 BY MR. POLAK:

16 Q. Does your language here talk about it being in
17 part correct in 2024 and in part no, not in 2024?

18 MR. LINKE: Objection as to form.

19 BY MR. POLAK:

20 Q. Yes or no.

21 A. This is my contribution. I believe it was
22 updated to meet Wikipedia standards, but at this point,
23 no, it only referred to 2024 as we're both reading.

24 Q. Right. So this lawsuit started in 2022, and so
25 your statement that PTK entered into two lawsuits in

1 2024 is false, right?

2 A. I don't think it's false.

3 Q. Well, what is true about this? The lawsuit
4 didn't start in 2024 and there is only one lawsuit here,
5 so what is true about this statement?

6 MR. LINKE: Objection as to form.

7 THE WITNESS: To my knowledge, the amended --
8 the second amended complaint to PTK was last amended in
9 2024, that's a lawsuit. And our countersuit of
10 attempted monopoly is also a lawsuit. And those are two
11 that were entered into or formally brought to the court
12 in 2024.

13 So while, you know, it's -- it's hard to be
14 perfect, we all strive for it. And I wish I could be
15 perfect or more perfect, but this is the best of ability
16 and I think it accurately describes the fact that in
17 2024 there were two amended complaints and two lawsuits
18 filed and it accurately explains that and links to
19 sources to confirm that.

20 BY MR. POLAK:

21 Q. So you think every time somebody amends a
22 complaint, it's a new lawsuit?

23 MR. LINKE: Objection as to form.

24 THE WITNESS: I'm not a lawyer, so I can't
25 really speak to that, I don't know.

1 BY MR. POLAK:

2 Q. I'm not asking you whether it's right or not.
3 I'm asking you what you think.

4 MR. LINKE: Objection as to form.

5 THE WITNESS: My understanding is that, and
6 this is just my understanding because you're asking me.
7 Whenever new claims are added or brought forth to a
8 party, it could be interpreted as a new lawsuit.

9 BY MR. POLAK:

10 Q. I'm going to show you what's been marked as
11 Exhibit 382, this is Judge Reeves order on the second
12 injunction against you and your company. See here,
13 order on second motion for preliminary injunction?

14 (Exhibit 382 marked for identification.)

15 THE WITNESS: Yes.

16 BY MR. POLAK:

17 Q. Let's go to page -- did you read this order
18 when it came down?

19 A. Yes, I did.

20 Q. And this order came down on August 22, so a
21 little over a month ago, right?

22 A. I believe that's what the document says, yes.

23 Q. Did you read it once or did you read it
24 multiple times?

25 A. I have read it many times.

1 Q. Okay. Do you feel like you know what's in it?

2 You feel --

3 MR. LINKE: Objection.

4 BY MR. POLAK:

5 Q. You feel like you know what Judge Reeves was
6 telling you in his order?

7 MR. LINKE: Objection as to form.

8 THE WITNESS: I -- I believe -- I believe so.

9 BY MR. POLAK:

10 Q. Let's go down here to page 13. It says here
11 that Honor Society mis -- this is Judge Reeves, Honor
12 Society misleads again when it frames itself as the
13 plaintiff in this litigation. This lawsuit, of course,
14 was filed by PTK. Honor Society knows this. Do you see
15 that?

16 A. Yes, I see that right now.

17 Q. And so do you disagree with Judge Reeves when
18 he says that there was no justification to say that
19 Honor Society was the plaintiff here?

20 MR. LINKE: Objection as to form. Objection.
21 It's outside the scope of the noticed 30(b)(6)
22 deposition topics.

23 THE WITNESS: I'm sorry, I'm just trying my
24 best to help you here, but what I would say is, like a
25 broken record, you're bending the space time continuum

1 and you're -- you're referring to a document that
2 occurred on 8/22 to discuss what should have been known
3 or somehow I should have known and that occurred in
4 July, so to my -- to my knowledge, there is no way I
5 would know something that would happen in the future.

6 BY MR. POLAK:

7 Q. I'm not asking you about something that
8 happened in the future, Mr. Moradian. Simply we were
9 talking about the language that was on -- that we were
10 looking at there in -- on the page. And you told me
11 that you thought there were two lawsuits regardless,
12 that's why we're talking about it Mr. Moradian.

13 So let's look here at what else you wrote.
14 Honor Society sued PTK claiming it misrepresents its
15 membership criteria and potentially deceiving students
16 under false premises -- pretenses. Do you see that?

17 A. I see that.

18 Q. Okay. Is there any reference here -- you go on
19 to say that PTK filed a lawsuit against Honor Society
20 alleging trademark infringement. That's the second
21 sentence, right?

22 A. Yes, I see that.

23 Q. Now, you do understand that Judge Reeves told
24 you later on that there was only one lawsuit and PTK was
25 the one that filed it, right?

1 MR. LINKE: Objection as to form.

2 THE WITNESS: I'm not sure that's what
3 Judge Reeves said in that statement. And I'm not sure
4 how that applies retroactively to a month beforehand.

5 BY MR. POLAK:

6 Q. The question here for you, Mr. Moradian, is
7 this statement here that Phi Theta Kappa entered into
8 two lawsuits, one filed by Honor Society and the other
9 filed by PTK is just simply untrue, if you're to believe
10 what Judge Reeves wrote in his order, right?

11 MR. LINKE: Objection as to form.

12 THE WITNESS: Well, I'd like to take a moment
13 for us to unpack this because it is very important to me
14 that we are verifiable, reliable and objective, so can
15 you please respectfully bring Judge Reeves --

16 BY MR. POLAK:

17 Q. I need you to answer the question,
18 Mr. Moradian. I don't need you to preach to me. I
19 don't need you to accuse me of misconduct. And I don't
20 need to hear any funky words like chicanery, okay? I
21 just need you to answer the questions. So I will object
22 to your answer as being nonresponsive.

23 Please answer the question.

24 A. I'm trying my best, sir.

25 Q. I don't think you are.

1 A. I really am.

2 Q. I think you're trying to play games with me to
3 do exactly what I warned Judge Meyers what you were
4 going to do, which is run out the clock.

5 A. Sir, I'm trying my best to answer your
6 questions. And I will answer any question you put
7 before me to the best of my ability.

8 To my knowledge, this is three questions,
9 topics for a 30(b)(6) and you're spending what looks to
10 be seven hours on three questions. I don't think that
11 was the spirit of this, but, you know, you're entitled
12 to it and I'm here to help you, so please, please work
13 with me so I can do my best to help you, sir.

14 MR. POLAK: Objection. Nonresponsive.

15 BY MR. POLAK:

16 Q. Please, Mr. Moradian, please answer my
17 question.

18 Ms. Langgle, could you please read the
19 question?

20 THE COURT REPORTER: Yes.

21 (The last question was read back.)

22 BY MR. POLAK:

23 Q. Mr. Moradian, we've been waiting about a minute
24 for you to answer the question. Could you please just
25 answer the question?

1 A. Can you please point me to the statement in
2 Exhibit 382 that you're referring to prior? Just I want
3 to make sure my answer is as accurate and fully
4 responsive as possible.

5 Q. Mr. Moradian, my question was very clear.
6 We've been talking about this section this entire time.
7 And here you're saying that Honor Society sued PTK in
8 2024 and there was a separate lawsuit filed by PTK
9 against Honor Society. Those two things are just not
10 true, are they?

11 MR. LINKE: Objection as to form.

12 BY MR. POLAK:

13 Q. The lawsuit started in 2022, right?

14 MR. LINKE: Objection as to form.

15 THE WITNESS: Yes, that is my understanding of
16 the initial lawsuit.

17 BY MR. POLAK:

18 Q. And at the time that you made this edit, you
19 knew that the lawsuit started in 2022?

20 MR. LINKE: Objection as to form.

21 THE WITNESS: Well, in reading the disclaimer
22 here, as well as looking for, it talks about that, you
23 know, we were sued in federal court by PTK on April 20,
24 2022, for designation of trade dress and infringement of
25 unfair competition. Then it says Honor Society Michael

1 Moradian countersued and are presently
2 defendants/counter-plaintiffs in this litigation.

3 And so based on Judge Reeves' words, it becomes
4 clear to me countersued to my knowledge does mean that
5 there was another lawsuit or suit back and that both of
6 these were occurring in 2024. And so I believe to my
7 understanding that that statement was wholly true. I
8 think I would have, you know, polished it up a little
9 bit more, but needless to say, Wikipedia is a community
10 and people stepped up and did that to my knowledge.

11 MR. POLAK: Objection. Nonresponsive.

12 Ms. Langgle, could you read the question back
13 again?

14 THE COURT REPORTER: Yes.

15 (The last question was read back.)

16 MR. LINKE: Objection as to form.

17 THE WITNESS: Yes, I am aware, and I was aware
18 that the lawsuit originally started in 2022, but had
19 updates in 2024.

20 BY MR. POLAK:

21 Q. I'm going to switch over to the existing --
22 sharing my screen with you. This is existing Phi Theta
23 Kappa page. We scroll down here to controversies and
24 members misconduct, we see the same sentence still here,
25 now October 1 of 2024. So the remainder of July, all of

1 August, all of September, all of October -- I'm sorry,
2 and the first day of October, this language is still
3 here that you wrote, in 2024, Phi Theta Kappa entered
4 into two lawsuits, right?

5 MR. LINKE: Objection as to form.

6 BY MR. POLAK:

7 Q. That's what it still says, right?

8 MR. LINKE: Objection as to form.

9 THE WITNESS: I don't own or operate Wikipedia
10 nor this page. Yes, it does still say that. And that's
11 part of the issue with Wikipedia, is that, you know,
12 anybody can write anything and, you know, it is an
13 issue. It is something that Wikipedia deals with and I
14 don't believe -- well, I believe I answered your
15 question, so I don't want to overstep.

16 BY MR. POLAK:

17 Q. You have the ability to make edits to this,
18 right?

19 A. No.

20 MR. LINKE: Objection as to form.

21 BY MR. POLAK:

22 Q. What, Mr. Moradian?

23 A. I currently do not have the ability.

24 Q. When did you lose the ability to make edits to
25 this?

1 A. I believe when the preliminary injunction was
2 issued, I lost my ability or -- in order to comply with
3 the injunction more accurately, I -- that's part of the
4 injunction, so I would not be at liberty to edit this
5 page at all.

6 Q. Would you agree with me that this first
7 sentence is that you wrote back in July is not
8 completely factually true?

9 MR. LINKE: Objection as to form.

10 THE WITNESS: I would dispute that.

11 BY MR. POLAK:

12 Q. Why?

13 A. To my knowledge, PTK entered two lawsuits in
14 2024 as both a plaintiff and counter-plaintiff regarding
15 those topics of trade dress and attempted monopoly. And
16 so the statement itself, while not a perfect statement
17 or perfectly worded, is accurate.

18 Q. I'm going to show you what's been marked as
19 Exhibit 383, Exhibit E-1 to Dr. Tincher-Ladner's
20 declaration is what this exhibit originally was, but
21 we're going to call it Exhibit 383. And this is a
22 comparison of revisions, just like we looked at before,
23 between July 22, 2024, and later that day July 22, 2024.
24 Do you see that?

25 (Exhibit 383 marked for identification.)

1 THE WITNESS: Yes, I see that.

2 BY MR. POLAK:

3 Q. Okay. And you are the source of these
4 revisions, right? That's why it says your name right
5 here?

6 A. Yes, I believe that's the case.

7 Q. Okay. Very first paragraph here on,
8 November 19, 1929, Phi Theta Kappa petitioned the
9 American association of junior colleges. Do you see
10 that paragraph?

11 A. Yes, I believe I see it.

12 Q. And then the second sentence is: While not
13 historically accurate, is in green, Phi Theta Kappa now
14 celebrates its Founder's Day on November 19. Are you
15 the one that wrote that, while not historically
16 accurate?

17 A. Well, yes, I believe based on this picture, I
18 believe that is true. And that is written by
19 WikiObjectivity.

20 Q. Okay, meaning written by you, don't use your
21 alias, it was written by you, Michael Moradian, right?

22 A. Yes.

23 Q. Okay. Did you footnote that?

24 A. The whole section --

25 Q. Did you footnote that change, Mr. Moradian?

1 A. Sir, the way footnotes works --

2 Q. It's a yes-or-no question, Mr. Moradian.

3 Really, I'm cutting you off because I'm tired of hearing
4 you not give me answers to my questions.

5 Did you footnote that change, yes or no?

6 MR. LINKE: Objection as to form.

7 THE WITNESS: I'm sorry, you feel that way.

8 And I'm really genuinely trying my hardest here to help
9 you. It doesn't hurt us if you cut me off and try to
10 put words in my mouth, but what I'm saying is no, there
11 is not a footnote to that specific section. No, there
12 is not a footnote to any of this changes, and no, it's
13 not necessary.

14 BY MR. POLAK:

15 Q. You told me before that you were entitled to
16 delete 22 names of people who are notable former members
17 of PTK because there was no footnote. Yet, you put this
18 on here and did not footnote it yourself. Do I
19 understand that correctly?

20 MR. LINKE: Objection as to form.

21 THE WITNESS: Again, there is a difference
22 between notability, right? So there is a section called
23 notable members because people need to be notable.
24 That's the whole point of the section.

25 But the way Wikipedia works, and, you know, I

1 actually try to use PTK's exact wording, which you've
2 seen, but that -- even that is against Wikipedia
3 regulations. So you have to summarize, you know, and so
4 this is not in itself a notable contribution, it's just
5 a summary of a statement of fact.

6 BY MR. POLAK:

7 Q. Wait. You're saying here that what was on --
8 that Phi Theta Kappa is inaccurately celebrating its
9 Founder's Day on November 19. You're the one that put
10 that language in there, that it was not historically
11 accurate, but you're just fine with not documenting that
12 with some source?

13 A. Well, but you --

14 MR. LINKE: Objection. Objection as to form.

15 THE WITNESS: Both you and I sitting here today
16 can acknowledge that that statement is truthful and
17 correct. There is no dispute to that.

18 BY MR. POLAK:

19 Q. That's not my point, Mr. Moradian. My point is
20 that in the one instance with respect to the members,
21 you were just fine deleting everything because they did
22 not have footnotes with sources, but here you
23 interjected something and there is no footnote, there is
24 no source. And I'm trying to understand why it is okay
25 in one instance, but not okay in the other?

1 A. Sure, and I'll do --

2 MR. LINKE: Objection. Objection as to form.

3 THE WITNESS: I'll do my best to explain your
4 question so that you can fully understand it. A section
5 that has notable members by definition requires
6 notability for each member. So these members have to be
7 verified, reliable and notable. That's the definition
8 of the section.

9 A commentary on a statement that is untrue and
10 recognized as such and a truthful statement is put in
11 does not require the same notability standard. It just
12 doesn't. It's not a section called notable members. It
13 is not a claim of notability. It is just a truthful
14 statement, so I think both you and I agree on that.

15 BY MR. POLAK:

16 Q. Why is that statement not historically
17 accurate?

18 A. Well --

19 Q. Actually, let me withdraw that question.

20 Where did you get your information from on
21 which you based this insertion that it is, quote, not
22 historically accurate?

23 A. I got it from video and text from Phi Theta
24 Kappa and Dr. Lynn Tincher-Ladner.

25 Q. What specifically from Dr. Tincher-Ladner?

1 A. Well, it's explicitly stated, we received our
2 November 19, 1929, our petition from AAJC to be
3 recognized as unofficial Honor Society. And then we
4 decided, you know, we acknowledged -- basically says
5 that's not our founding day, but it -- we chose to
6 recognize that day as our founding date. And that's
7 very proudly reverberating through PTK materials.

8 And so by their own admission, if they just
9 chose a date, that wasn't the date of their founding, I
10 think you and I can agree that that wouldn't be a
11 historically accurate date.

12 Q. So you have a source that you could have done,
13 but you didn't?

14 A. Sir, I --

15 MR. LINKE: Objection as to form.

16 BY MR. POLAK:

17 Q. Do you have an answer to that question,
18 Mr. Moradian?

19 A. Yeah, I -- I have added many sections like
20 that, such as the section below that talks about the
21 history in a positive light for PTK.

22 And another thing to -- to make clear here is
23 these edits occur back-to-back-to-back. And so one edit
24 could be to add the text and the next edit could be to
25 add the citation. So just because one green copy

1 doesn't include it, doesn't mean that within moments or
2 less than minutes a citation would have been added to
3 these, so I'd have to look at all of the edits at this
4 time, but I do believe -- well, we know, we agree that
5 it is not historically accurate, so that one is not in
6 contest in its truthfulness.

7 And then this second section is just very
8 positive content about PTK. And I think it is important
9 to celebrate, you know, history, legacy, these are all
10 the things that PTK purports to have, right? So we
11 should celebrate the whole story.

12 And, you know, to my knowledge this isn't the
13 Lynn Tincher-Ladner society, it is the Phi Theta Kappa
14 society. And they had history that predates her and
15 that -- that's a part of the history, that should be
16 celebrated. So that's up to, you know, the public,
17 Wikipedia, everybody, but that is part of the story and
18 these were youthful contributions. And I try my best to
19 impart objectivity and neutrality and notability and
20 verifiability.

21 MR. POLAK: Objection. Nonresponsive. That
22 question really didn't require a -- what was amounted to
23 about a three to five minute answer.

24 BY MR. POLAK:

25 Q. All right. So I think what you have told me

1 previously is that -- well, okay regardless. Let's go
2 down here, look at what you wrote earlier. You wrote
3 Phi Theta Kappa is currently in a lawsuit over false
4 advertising, attempted monopoly and trade dress. Do you
5 see that? You wrote that, right?

6 A. It looks like that, yes.

7 Q. Okay. PTK allegedly misrepresents its
8 membership criteria false asserting -- falsely asserting
9 that it is limited to the top 10 percent of students,
10 thus potentially deceiving students into joining under
11 false pretenses. That's your litigation position in
12 this case, right?

13 MR. LINKE: Objection as to form.

14 THE WITNESS: That is a small portion of it; to
15 my knowledge.

16 BY MR. POLAK:

17 Q. But it's part of your litigation position in
18 this case, right?

19 MR. LINKE: Objection as to form.

20 BY MR. POLAK:

21 Q. Are you going to answer my question?

22 A. Would you mind repeating it? I was distracted
23 by that raised hand by Dr. Tincher-Ladner.

24 MR. POLAK: Ms. Langgle, would you read the
25 question, please?

1 THE COURT REPORTER: Yes.

2 (The last question was read back.)

3 THE WITNESS: To an extent, yes. And it's
4 neutrally written statement about the circumstances.
5 BY MR. POLAK:

6 Q. Do you identify PTK's position in what you
7 wrote?

8 A. Yes, I believe the next line --

9 Q. Let me be clear. Do you identify PTK's
10 position as to the validity of that claim concerning
11 misrepresentation?

12 A. Yes, I believe by adding the terms allegedly,
13 potentially. And it is helping create a more neutral
14 circumstance. This is a contribution. The next line
15 talks in-depth about PTK and the moderators and
16 administrators took this up themselves, brought it into
17 compliance within hours, and they stood as such. So
18 I -- I think Wikipedia in general does a great job to
19 make sure the statements are handled under their terms.

20 MR. POLAK: Objection. Nonresponsive.

21 Can you read the question back, Ms. Langgle?

22 THE COURT REPORTER: Yes.

23 (The last question was read back.)

24 THE WITNESS: Yes.
25

1 BY MR. POLAK:

2 Q. Where? Where do you identify -- well, we'll
3 start with, do you say PTK denies the claims? Just yes
4 or no, do you state that they deny the claims?

5 A. No, nor is it my job to do that.

6 Q. That would be improper for you to add more
7 language around what PTK has -- has -- is claiming to
8 defend itself against those claims, right?

9 MR. LINKE: Objection as to form.

10 THE WITNESS: I don't understand the question.

11 BY MR. POLAK:

12 Q. You don't feel like you would need to explain
13 what PTK's position is? For example, that it denies
14 misrepresenting that top 10 percent number?

15 MR. LINKE: Objection as to form.

16 THE WITNESS: I think allegedly and potentially
17 implicate implied that. However, we have already seen
18 that those are true misrepresentations and, you know,
19 but for this legal situation, we -- we wouldn't even be
20 sitting here saying allegedly. They did deceive
21 students. Like, there is no -- that's not in question.
22 Or maybe it is in question, but we neutralized, I
23 neutralized it. And to be fair, and to help get closer
24 to compliance with Wikipedia by adding in those words,
25 so yes, the answer is yes, I did.

1 BY MR. POLAK:

2 Q. Well, let's look at what you wrote about your
3 own -- about PTK's claims against the Honor Society. It
4 says PTK filed a lawsuit against Honor Society alleging
5 trademark infringement and the use of visual elements
6 and marketing materials, namely blue and gold colors,
7 gold stoles and the usage of wreaths, right? Did I read
8 that correctly?

9 A. Yes, you did.

10 Q. Okay. And again, you -- you put, just like you
11 put up here allegedly, you use the word alleging
12 trademark infringement, right?

13 A. Yes.

14 Q. That's not all you wrote here. You also wrote
15 this occurred despite the prevalence of blue and gold
16 colors and stoles in honor societies such as Phi Beta
17 Kappa, Phi Kappa Phi, Golden Key International, Honor
18 Society and many others, right? That's your litigation
19 position in this case, isn't it?

20 A. Well, I appreciate --

21 MR. LINKE: Objection. Objection as to form.

22 THE WITNESS: I appreciate that you highlighted
23 the fact that I did treat both sides fairly, so I
24 appreciate you highlighting that, both sides were
25 equally described. And then the next statement is a

1 truth.

2 MR. POLAK: That's your -- okay. Objection.

3 Nonresponsive in the entirety of that answer.

4 Ms. Langgle, would you please read the question
5 back so Mr. Moradian can answer the question?

6 THE COURT REPORTER: Yes.

7 (The last question was read back.)

8 THE WITNESS: It looks like that was a compound
9 question, but I further believe there was a question
10 before this in the line of questioning.

11 BY MR. POLAK:

12 Q. Mr. Moradian, I asked you simply, that is your
13 litigation position in this case, isn't it?

14 MR. LINKE: Objection as to form.

15 THE WITNESS: My litigation position is that
16 PTK is acting like a monopolist and using litigation and
17 forced to eliminate competition. That's my litigation
18 position.

19 BY MR. POLAK:

20 Q. Mr. Moradian, objection, nonresponsive.

21 My question for you, Mr. Moradian, is isn't it
22 true that this statement here about the prevalence of
23 blue and gold colors and other honor societies is part
24 of your litigation position in this case? Yes or no.

25 MR. LINKE: Objection as to form.

1 THE WITNESS: In part.

2 BY MR. POLAK:

3 Q. And it is a defense that you are asserting in
4 response to PTK's claims alleging trademark infringement
5 and the use of similar visual elements and marketing
6 materials, namely blue and gold colors, right?

7 MR. LINKE: Objection as to form.

8 BY MR. POLAK:

9 Q. What's that, Mr. Moradian?

10 A. To the extent that truth is a defense, yes.

11 Q. Okay. So here we see that you have provided
12 language in what you edited this with that states your
13 litigation position, but you did not give PTK the same
14 courtesy up above where you were talking about the
15 claims that you're making against PTK, right?

16 MR. LINKE: Objection as to form.

17 THE WITNESS: Wikipedia gives them that
18 courtesy as well, yes.

19 BY MR. POLAK:

20 Q. Gives who? I thought you told me PTK can't go
21 change its own Wikipedia page. That in your view,
22 that's improper?

23 A. So a third party, like Rublamb, can and did do
24 that.

25 Q. But you didn't and you're the one who wrote it,

1 right?

2 A. Sir, yes, I did write it. And no, I am not
3 responsible for the -- what Wikipedia chooses to accept
4 and deny.

5 Q. You're responsible for what you wrote, though,
6 aren't you?

7 A. Yes. I only wrote truthful and as neutral as
8 possible as I could write and yes.

9 Q. And you think it is neutral writing to talk
10 about your defenses in this case, but leave out PTK's
11 defenses in this case? That's your definition of
12 neutrality?

13 MR. LINKE: Objection as to form.

14 THE WITNESS: So it seems like you're
15 conflating truth with a defense position, but truth
16 supersedes all of that. And so truth stands on its own
17 two feet.

18 BY MR. POLAK:

19 Q. So the answer is yes, that's your definition of
20 neutrality? You can leave out facts that are not
21 helpful to you, but you can include facts that are
22 helpful to you, that's neutral?

23 MR. LINKE: Objection as to form.

24 THE WITNESS: Sir, it's really disconcerting
25 that you're taking my answers and twisting them and

1 maligning them. I've answered this many times. And the
2 fact that I wrote that PTK filed a lawsuit and all of
3 its claims makes it clear that I did a good faith effort
4 to describe PTK's efforts as well. And that should be
5 applauded, so yes, I did represent both sides to the
6 best of my abilities.

7 BY MR. POLAK:

8 Q. You also continued to write here:
9 Additionally, wreaths have been a symbol of achievement
10 dating back to ancient Greece. That is also one of your
11 litigation positions in this case, right?

12 MR. LINKE: Objection as to form.

13 THE WITNESS: Truth supersedes litigation and
14 it supersedes the Wikipedia standards. Truth is truth
15 and the absolute truth is what Wikipedia seeks. And so
16 to answer your question, yes, it is a part of
17 Wikipedia's standards that could be argued that it is a
18 part of it. And yes, it is a part of a defense, but it
19 is also just absolute truth.

20 BY MR. POLAK:

21 Q. Because you say so?

22 MR. LINKE: Objection as to form.

23 THE WITNESS: No, I see a citation there.

24 BY MR. POLAK:

25 Q. It's true that it is a defense of yours?

1 MR. LINKE: Objection as to form.

2 THE WITNESS: Yes, truth is my defense, in
3 part.

4 BY MR. POLAK:

5 Q. You wrote content about Rod Risley on the PTK
6 Wikipedia pages too, right?

7 MR. LINKE: Objection as to form.

8 THE WITNESS: Yes, I believe so.

9 BY MR. POLAK:

10 Q. Let's take a look at -- well, first of all,
11 what was the purpose of you editing PTK's Wikipedia page
12 to make reference to Rod Risley?

13 MR. LINKE: Objection as to form.

14 THE WITNESS: So Wikipedia has standards that
15 rely on notability, verifiability and reliability. If
16 anything breaches those standards, then it should be
17 included in the page. It is part of the history and it
18 is a noted part of the history. And so there would be
19 no reason other than making sure that there is a
20 comprehensive, neutral, reliable statement on Phi Theta
21 Kappa.

22 BY MR. POLAK:

23 Q. You made statements in the survey that was
24 issued in late February, early March concerning
25 Mr. Risley, right?

1 A. I'm not prepared to talk about that today. I
2 prepared for my 30(b)(6) to answer the three questions
3 pending before me.

4 Q. You can still answer the question though.
5 You don't remember whether you made any
6 references to sexual harassment allegations of PTK and
7 your honor society survey back in March?

8 MR. LINKE: Objection as to form.

9 THE WITNESS: Broadly I do remember, yes.

10 BY MR. POLAK:

11 Q. And the Court found that that question, as well
12 as several other questions were malicious. We've
13 already talked about that, right?

14 MR. LINKE: Objection as to form.

15 THE WITNESS: I believe we have talked about
16 that.

17 BY MR. POLAK:

18 Q. Yet you're making changes to PTK's Wikipedia
19 page within weeks after the injunction order comes down
20 telling you that those survey questions about the sexual
21 harassment were malicious. You're making changes to the
22 PTK Wikipedia page about the very same issue, right?

23 MR. LINKE: Objection as to form.

24 THE WITNESS: I'm really sorry. I'm trying my
25 best to answer your questions. And I'm trying my best

1 to be as truthful and accurate as possible. And I'm
2 sorry if, you know, the answers are not what you are
3 seeking, but what I will say is that your statement was
4 about the survey questions, which I acknowledge. There
5 was nothing in there about Wikipedia, so I -- I don't --
6 I just don't see -- yeah, I don't see where your --
7 you're tying in the spirit facts here.

8 BY MR. LINKE:

9 Q. So you didn't see any problem in going and
10 editing in a public way PTK's Wikipedia page to talk
11 about these sexual harassment allegations when the judge
12 had already told you not to send around survey questions
13 in a public way about the same subject matter?

14 MR. LINKE: Objection as to form.

15 THE WITNESS: To answer your question, the
16 survey questions are the survey questions, and I
17 respected that fully. There is no mention of Wikipedia.
18 The articles in question were from Inside Higher Ed,
19 Chronicles of Higher Education, And Then She Spoke Up,
20 The Clarion Ledger and a few other notable sources. And
21 I didn't write those articles and I -- I'm confident
22 that you know that, so I -- I actually didn't do
23 anything other than handle truth. And again, I -- I'm
24 sorry, but truth is truth.

25

1 BY MR. POLAK:

2 Q. Let's look at what you wrote here. This is on
3 Exhibit 381, this is as the PTK Wikipedia web page
4 looked on July 24. And we looked before, this
5 controversies and misconduct, we already went over this
6 first paragraph. And we determined you were the one who
7 wrote all of that.

8 You're also the one that wrote this paragraph,
9 right? In 2015, National PTK president Rod Risley took
10 a paid leave of absence following claims of sexual
11 harassment, intimidation and unprofessional behavior
12 from two former student international officers. These
13 allegations prompted the Phi Theta Kappa board of
14 directors to initiate an investigation. Rod Risley
15 announced his retirement, leading to the termination of
16 the inquiry and his receipt of a multimillion dollar
17 retirement package.

18 You wrote that, right?

19 A. I'm not sure that I did. We'd have to look at
20 the audit logs to find that specific section.

21 Q. All right. We're looking back at the page that
22 we looked at before. We see all of the language that I
23 just read. Does that refresh your memory as to whether
24 you're the one who wrote that?

25 A. It looks like it. It looks like there is eight

1 sources in there.

2 Q. I didn't ask you about sources. I'm just
3 asking you, sir, whether or not you're the one who wrote
4 it.

5 Can you please just confirm on the record that
6 you are the one who wrote it?

7 MR. LINKE: Objection as to form.

8 MR. POLAK: I would object to that last answer
9 as being nonresponsive, so please, answer the question,
10 Mr. Moradian. Confirm on the record that you are the
11 one that wrote this content here. I'm sorry --

12 MR. LINKE: Objection as to form.

13 MR. POLAK: This one, that we were looking at
14 before.

15 THE WITNESS: Is there a question outstanding?

16 BY MR. POLAK:

17 Q. Yeah, there is, Mr. Moradian.

18 You are here to testify about the changes that
19 you made to this website, okay? And I've been waiting
20 for answers from you for extended periods of time. I've
21 had to go back and rebuild for you the changes that you
22 made to show you where it is. That was your homework to
23 do coming here today, not mine, but I'll do it, but I'm
24 going to ask you now I think the fourth, maybe the fifth
25 time, are you the one who put this language on the

1 Wikipedia page that we're looking at here in this
2 exhibit, 381, starting with in 2015 and ending with
3 package?

4 MR. LINKE: Objection as to form.

5 THE WITNESS: Firstly, please don't yell at me,
6 I'm trying my best here to answer your questions as
7 thoughtfully as possible. And I don't appreciate that
8 tone.

9 BY MR. POLAK:

10 Q. You were not trying to answer questions
11 thoughtfully or responsively, Mr. Moradian. Don't throw
12 that at me because I don't believe it for a minute, and
13 I'm not here to argue with you about it. What I am here
14 is to get an answer from you. And I'm not yelling at
15 you.

16 I will say that I'm very frustrated with the
17 pace of the deposition, the responsiveness of your
18 answers, the fact that I've had to go back, I think
19 probably around 50 times asking the court reporter to
20 read the question back is not the way this process is
21 supposed to work, but look, I'm going to ask you now for
22 the seventh time I think, sixth or seventh time, are you
23 the one who is responsible for the words that we see
24 here on document, Exhibit 381, starting with in 2015 to
25 package?

1 MR. LINKE: Objection as to form.

2 THE WITNESS: I believe so.

3 BY MR. POLAK:

4 Q. Thank you.

5 Nowhere in here is there any statement that
6 Mr. Risley or PTK denied the allegations, is there?

7 MR. LINKE: Objection as to form.

8 THE WITNESS: I'm not sure that it's verifiable
9 and reliably on the internet that that occurred.

10 BY MR. POLAK:

11 Q. Did you read these -- did you read these
12 articles that you posted?

13 A. Yes, I did.

14 Q. Did you read them front to back?

15 A. Yes, I did.

16 Q. Did you read them carefully?

17 A. Yes.

18 Q. And it is your recollection that none of those
19 articles state that Mr. Risley denied the allegations?

20 A. I don't believe those were the take aways from
21 the articles.

22 Q. I'm not asking you what the take aways were, so
23 objection. Nonresponsive.

24 Can you read the question back, Ms. Langgle?

25 THE COURT REPORTER: Yes.

1 (The last question was read back.)

2 THE WITNESS: Look, whether or not he denies it
3 does not again change truth. I think, you know, you may
4 not have a solid understanding of what truth means. And
5 to that effect, maybe that's why we're in this
6 litigation to begin with, you know. I think there --
7 you know, there is a fundamental understanding of
8 objectivity and analysis that seems to be lacking here,
9 but I will say that I'm trying my best to answer your
10 questions completely. And it's -- if you don't get an
11 answer that you don't like -- if you got an answer that
12 you don't like, you just simply say nonresponsive and
13 you don't allow for a proper ask and answer style
14 scenario here. This is worse than a military
15 interrogation, in terms of asking something and then
16 punishing if you don't get the answer that you desire,
17 so I'm trying my best here.

18 MR. POLAK: Objection. Nonresponsive.

19 Ms. Langgle, will you reread the question
20 again, please. Hopefully we'll get an answer this time.

21 THE COURT REPORTER: Yes.

22 (The last question was read back.)

23 THE WITNESS: I don't recollect that, no.

24 BY MR. POLAK:

25 Q. Do you recall whether any of those articles

1 made reference to the two young women demanding money to
2 compensate them to settle the case, to settle their
3 claims?

4 A. Well, as Judge Reeves described, the Tony Morex
5 declaration added further context to the scenario, which
6 is part of the record now. And those clarified those
7 points that to my understanding, based on the girls'
8 statements, they did not seek any money, that was their
9 lawyers asking for it. And it is being used and
10 conflated to obscure the truth, so yes, that's my
11 understanding.

12 Q. Well, I'm totally confused by your answer. Is
13 it your understanding that the articles that you refer
14 to here in the article -- in this, make reference to
15 demands for financial compensation for these claims of
16 sexual harassment?

17 MR. LINKE: Objection as to form.

18 THE WITNESS: I believe that one or two of them
19 may have referenced that, but there is also information
20 available to us that refutes that as well.

21 BY MR. POLAK:

22 Q. Okay. You didn't put any of that in your
23 Wikiedits here, did you?

24 A. Sir, I'm -- I'm not Wikipedia, I'm just a
25 contributor.

1 Q. You're the one who wrote this, you are the one
2 that made the conscious decision to not put that in what
3 you wrote, right?

4 MR. LINKE: Objection as to form.

5 THE WITNESS: Well, there is a lot of room in
6 terms of what is, you know -- that -- anybody can
7 interpret and write what they believe is the main, you
8 know, portion of the link. I don't believe that one
9 sentence from a lawyer represents the full spirit and
10 scope of what happened regarding the sexual misconduct
11 towards these girls. So, you know, I invite anybody --
12 BY MR. POLAK:

13 Q. I thought it was alleged sexual misconduct,
14 Mr. Moradian?

15 A. Well, we're here in deposition and you're
16 asking me what I know. We've spoken to the women
17 themselves. And to that extent, it is alleged, but
18 we've heard from sources that are credible that do
19 allege them, so yes, it is --

20 Q. We're talking about what you wrote here on the
21 Wikipedia page. Not what you happened to have learned
22 during the course of this lawsuit, okay? So with
23 respect to what you wrote here, can you point me to
24 anything here that says Rod Risley's point of view in
25 connection with these claims?

1 MR. LINKE: Objection as to form.

2 THE WITNESS: The more pertinent rhetorical
3 question is can you? Or anybody?

4 MR. POLAK: Objection. Nonresponsive.

5 BY MR. POLAK:

6 Q. Mr. Moradian, is there anything here that
7 states Rod Risley's point of view in connection with
8 these claims?

9 MR. LINKE: Objection as to form.

10 THE WITNESS: No, and I don't believe there
11 needs to be.

12 BY MR. POLAK:

13 Q. Okay. Is there anything here that states Phi
14 Theta Kappa's view of these claims?

15 MR. LINKE: Objection as to form.

16 THE WITNESS: There could be if PTK did not
17 delete their blog post and their statements on this.

18 BY MR. POLAK:

19 Q. You're saying that the articles that you cite
20 here do not contain any statements of position or point
21 of view by Phi Theta Kappa?

22 MR. LINKE: Objection as to form.

23 THE WITNESS: Well, the -- the primary sources
24 were deleted that -- of Phi Theta Kappa statements.
25 That's not in my control.

1 BY MR. POLAK:

2 Q. We're not talking about primary sources,
3 Mr. Moradian, I'm talking about any sources. And
4 specifically I'm talking about the articles that you
5 yourself cited. And are you telling me that there are
6 no references in those articles to Phi Theta Kappa's
7 point of view concerning these allegations?

8 MR. LINKE: Objection as to form.

9 THE WITNESS: My understanding, those were not
10 the thematic messages of the posts.

11 BY MR. POLAK:

12 Q. So that's where you draw the line is whether
13 the posts have thematic importance as opposed to actual
14 facts?

15 MR. LINKE: Objection as to form.

16 THE WITNESS: I don't know if I'm qualified to
17 answer that. I'm just one person contributing to
18 Wikipedia. I'm not a Wikipediaian.

19 BY MR. POLAK:

20 Q. At the end of the day, though, you could have
21 identified Rod Risley's denial of these allegations, Phi
22 Theta Kappa's investigation into the allegations and the
23 results of that investigation, the first one. And
24 otherwise the points of view stated in these articles,
25 by either Mr. Risley or Phi Theta Kappa, but you chose

1 not to, didn't you?

2 MR. LINKE: Objection as to form.

3 THE WITNESS: I dispute that characterization.

4 BY MR. POLAK:

5 Q. Why is it that you didn't include any point of
6 view of either Dr. Risley or Phi Theta Kappa in the text
7 that your fingers wrote?

8 MR. LINKE: Objection as to form.

9 THE WITNESS: Well, it looks like I did. It
10 looks like I wrote these allegations prompted the PTK
11 board of directors to initiate an investigation. That's
12 a positive statement about the steps that PTK took and
13 those were cited, so it shows that it was a good faith
14 effort to provide fair and balanced response.

15 BY MR. POLAK:

16 Q. All right. But these articles state so much
17 more in terms of Phi Theta Kappa's position and point of
18 view, don't they, than just --

19 MR. LINKE: Objection.

20 BY MR. POLAK:

21 Q. -- created a -- they initiated an
22 investigation?

23 MR. LINKE: Objection as to form.

24 THE WITNESS: I would disagree, but I would be
25 happy to look at the articles and, you know, have a

1 friendly debate about what they say.

2 BY MR. POLAK:

3 Q. Well, it's a little late for that since you're
4 the one who immediately after finding -- or having an
5 order against you and your company, enjoining a survey
6 that is on this very topic and you turn around and you
7 modify the Wikipedia page to include the very same
8 references. And those references have now been up for
9 months, it's a little late, isn't it?

10 A. No.

11 MR. LINKE: Objection as to form.

12 THE WITNESS: No.

13 BY MR. POLAK:

14 Q. Just so I'm clear, do you consider this
15 paragraph starting with in 2015 and ending with package,
16 to comply with the neutrality requirements of the
17 universal code of conduct for Wikipedia?

18 A. I'm not a lawyer, nor an administrator or
19 moderator of Wikipedia, so it would be hard for me to
20 make that distinguishment. But I would say that they do
21 capture a summation of what's presented in those
22 articles that are linked to.

23 Q. They just happen to not include in that
24 summation the point of view of Dr. Risley or Phi Theta
25 Kappa of the allegations?

1 MR. LINKE: Objection as to form.

2 THE WITNESS: No, that's untrue, it does. It
3 says that it prompted the PTK board to initiate
4 investigation, that's pretty pro PTK.

5 BY MR. POLAK:

6 Q. You don't think that that makes it sound as if
7 Dr. Risley did something wrong? That it was worthy of
8 being investigated?

9 MR. LINKE: Objection as to form.

10 THE WITNESS: I really don't know what you want
11 me to tell you there. I didn't write the articles about
12 this sexual misconduct. I was not involved in the
13 sexual misconduct. I did not, you know -- I was not
14 privy to, you know, I was not a first party witness of
15 this.

16 So these are reported facts on a notable,
17 verifiable and reliable websites, like inside Higher Ed.
18 and Chronicles of Higher Education. And Wikipedia is a
19 compilation of verifiable sources, and so the best that
20 you can really ask for is to try and convey the gist of
21 that and then to link back to where people can
22 investigate that on their own. And that was done.

23 BY MR. POLAK:

24 Q. And do you know whose choice -- whose choice it
25 was for Dr. Risley to take the paid leave of absence?

1 A. Well, my understanding is that Larry Horn found
2 an indecent photo of Rod Risley at the behest of Lynn
3 Tincher-Ladner. And Lynn Tincher-Ladner took that to
4 the board and basically utilized that to help get
5 Dr. Rod Risley terminated and proceed to get her into
6 the position, so that is what I do know.

7 MR. POLAK: Objection. Nonresponsive.

8 Ms. Langgle, could you please reread the
9 question, so hopefully Mr. Moradian can answer it?

10 THE COURT REPORTER: Yes.

11 (The last question was read back.)

12 THE WITNESS: This sounds like a memory test
13 right now. So to my memory, I can't say definitively,
14 but I would presume it would either be the board or
15 Dr. Risley himself.

16 BY MR. POLAK:

17 Q. You don't -- I'll tell you that the articles
18 that you cite state that Dr. Risley was the one who made
19 the choice to take the paid leave of absence to avoid
20 being a distraction. You don't say that here, do you?

21 A. Well, actually --

22 MR. LINKE: Objection. Objection as to form.

23 THE WITNESS: Actually, it does -- I do say
24 that. It says President Rod Risley took a leave of
25 absence. And the took is an action step that modifies

1 the words before it, so Rod Risley took a paid leave of
2 absence. It --

3 BY MR. POLAK:

4 Q. You think that's clear? You think that's clear
5 from what you wrote?

6 MR. LINKE: Objection as to form.

7 THE WITNESS: It's accurate.

8 BY MR. POLAK:

9 Q. All right. And here, Risley announced his
10 retirement, leading to the termination of the inquiry
11 and his -- the receipt of a multimillion dollar
12 retirement package.

13 You sat in Dr. Tincher-Ladner's deposition and
14 you heard her explain that that retirement had nothing
15 to do with these allegations, right?

16 MR. LINKE: Objection as to form.

17 THE WITNESS: I heard what Dr. Tincher-Ladner
18 said.

19 BY MR. POLAK:

20 Q. That deposition was on February 28, about
21 two months maybe prior to when it is that you made these
22 edits. Why would you put in this edit on Wikipedia
23 something that you know to be false or misleading?

24 MR. LINKE: Objection as to form.

25 THE WITNESS: I know this statement to be true.

1 BY MR. POLAK:

2 Q. It's not what Judge Reeves said. He told you,
3 in connection with the survey that you did, that had a
4 question on this very subject, that it -- that you
5 needed to be enjoined from restating that false and
6 misleading statement to the public because it wasn't
7 true.

8 MR. LINKE: Objection as to form.

9 THE WITNESS: Sir, that's a gross
10 mischaracterization and bordering on chicanery again.
11 Because what Judge Reeves said was very clear that the
12 six questions in their exact form were to not be asked
13 in that exact form, but they may even be asked in
14 another form, okay? And so that was the enjoined
15 statement. This is not that statement. And further, it
16 did remediate any of the terms that were not
17 satisfactory within that survey.

18 BY MR. POLAK:

19 Q. So you felt when you wrote, this very
20 comfortable in repeating the false and misleading
21 statement that Dr. Risley had received a multimillion
22 dollar retirement package as a part of his resolution of
23 this sexual harassment claim?

24 MR. LINKE: Objection as to form.

25 THE WITNESS: There is nothing false or

1 misleading about that statement. That's a whole truth
2 based on the 990 and based on the statements made.

3 BY MR. POLAK:

4 Q. It was his retirement that he had been saving
5 up for years. You don't say that here, do you?

6 MR. LINKE: Objection as to form.

7 THE WITNESS: It does say that he received a
8 retirement package.

9 BY MR. POLAK:

10 Q. He received a retirement package. That's not
11 what he received. He had been investing his own money
12 in a retirement plan for years. That is different,
13 right, Mr. Moradian?

14 MR. LINKE: Objection as to form.

15 THE WITNESS: Again, mischaracterization.
16 Deferred revenue is not his own money, it is deferred
17 revenue of his salary from PTK. And whether, you know,
18 that was invested in something, that's still a
19 retirement package. My definition is more truthful than
20 yours here.

21 And the fact that, you know, he was under
22 investigation, and then under investigation generally
23 means let's take a pause here. We're investigating. It
24 doesn't mean you just walk out, it's a get out of jail
25 free card. An investigation generally goes until the

1 investigation is over. To just say let's close the
2 investigation and I'll take \$4 million, that's a quid
3 pro quo of you close the investigation, I don't have to
4 jeopardize my \$4 million. And I'll take my \$4 million
5 and hand over the reigns to Dr. Boggs and
6 Dr. Tincher-Ladner to start their -- their hegemonic
7 empire, I don't know, taking their steps to, you know,
8 build -- again, I like -- I like -- I don't hold
9 anything against PTK or Lynn, I understand being a
10 leader. Being a leader is showing restraint at times
11 too.

12 And, you know, I call for us to have a
13 conversation. We don't have to do this all publicly.
14 We don't have to do it on the record. I don't want to
15 sit and talk to Wikipedia, but to the extent that truth
16 is being talked, you know, it is important that we feel
17 comfortable understanding and discussing truth, period.

18 MR. POLAK: Objection. Nonresponsive.

19 BY MR. POLAK:

20 Q. All right. So let's look at Exhibit 383 --

21 A. Would it be --

22 Q. We've looked at this document before. This is
23 Exhibit E-1 to Dr. Tincher-Ladner's declaration. And
24 this was -- this tract some of your revisions that you
25 made on the -- July 22, all right? Which is just a few

1 days before the revisions that we were looking at
2 before.

3 And we go down and we scroll down to leadership
4 misconduct, and let's see what you wrote about
5 Dr. Risley here. Here you wrote: Rod Risley's tenure
6 as national president was overshadowed by serious
7 allegations and further controversy regarding his
8 retirement compensation.

9 Do you think that is neutrally worded? A
10 simple yes or no will suffice.

11 MR. LINKE: Objection as to form.

12 THE WITNESS: Yes, I believe so.

13 BY MR. POLAK:

14 Q. You don't think the language calling it serious
15 allegations, further controversy, overshadowed are
16 inflammatory and nonneutral?

17 MR. LINKE: Objection as to form.

18 THE WITNESS: I think in my opinion they would
19 be best categorized as truthful.

20 BY MR. POLAK:

21 Q. Much of this language is the same and only
22 slightly different, but even when you wrote this, his --
23 there is no point of view from Dr. Risley, is there?
24 Such as Dr. Risley denied the allegations?

25 MR. LINKE: Objection as to form.

1 THE WITNESS: Well, it does pretty neutrally
2 describe the situation. It talks about the board
3 initiating an investigation. And it talks about Risley
4 announcing his retirement, so those are neutral terms.

5 BY MR. POLAK:

6 Q. But you don't talk about how Dr. Risley denied
7 the allegations, right?

8 A. Well, I think --

9 MR. LINKE: Objection as to form.

10 BY MR. POLAK:

11 Q. It's just a yes-or-no question, Michael. You
12 don't need to give me everything else that happens to be
13 in your head. It has nothing to do with the question
14 that I asked. I just need you to admit that there is
15 nothing here that says Dr. Risley denied the
16 allegations, right?

17 MR. LINKE: Objection as to form.

18 THE WITNESS: To my knowledge, those references
19 were deleted by PTK. If they existed on the web, it
20 would be easier to verify, but however PTK decided to
21 delete the most notable portions of that, so I, you
22 know, I try my best, but I can't control what PTK
23 believes.

24 BY MR. POLAK:

25 Q. Well, we're not really talking about that,

1 we're talking maybe the articles -- well, we've already
2 been over this in terms of what the articles say.

3 You then write starting with additionally,
4 additionally his abrupt retirement was marked by a
5 multimillion dollar compensation package, which cast
6 further doubt on the legitimacy and governance practices
7 of Phi Theta Kappa.

8 Do you consider that language to be neutral?

9 MR. LINKE: Objection as to form.

10 THE WITNESS: I do, but I'm not the arbiter of
11 this page and the moderators made it neutral.

12 BY MR. POLAK:

13 Q. This decision left the allegations unresolved
14 and raised significant concerns about accountability and
15 transparency within Phi Theta Kappa.

16 Is it your testimony under oath that you
17 believe that to be a neutral statement?

18 MR. LINKE: Objection as to form.

19 THE WITNESS: Yes, I do believe that to be
20 neutral, but ultimately it is left in the hands of
21 PTK -- of Wikipedia, and they resolved accordingly.

22 BY MR. POLAK:

23 Q. And you didn't provide any source to support
24 your statement about raised significant concerns about
25 accountability and transparency within Phi Theta Kappa?

1 MR. LINKE: Objection as to form.

2 THE WITNESS: Is that a statement or a
3 question?

4 BY MR. POLAK:

5 Q. It's a question, Mr. Moradian. There is no
6 citation here. You didn't provide any footnote --

7 A. Well --

8 Q. -- to support that statement?

9 MR. LINKE: Objection as to form.

10 THE WITNESS: There are many places that would
11 support that statement, including --

12 BY MR. POLAK:

13 Q. That's not what I asked you. I didn't ask you
14 if there were other places. I just asked you whether or
15 not you provided a footnote. And the truth is you did
16 not, did you?

17 MR. LINKE: Objection as to form.

18 THE WITNESS: I did not intend for my edits to
19 be an authoritative take on PTK. It is instead an
20 opportunity to --

21 THE COURT REPORTER: I'm sorry, can you start
22 over again?

23 THE WITNESS: I did not attempt for my entry to
24 be an authoritative viewpoint on PTK. I instead added
25 information that would be left in the hands of the

1 moderators and administrators to make their decision,
2 which they did.

3 BY MR. POLAK:

4 Q. Your edits to the PTK Wikipedia page also
5 involved words related to the Itawamba situation,
6 correct?

7 A. To an extent, yes.

8 VIDEOGRAPHER: Counsel, in a few minutes, can I
9 take a break to change the media?

10 MR. POLAK: Let's do that now.

11 VIDEOGRAPHER: Thank you.

12 This marks the end of Media No. 5. Going off
13 the record at 5:36 p.m. Pacific.

14 (Off the record at 5:36 p.m.)

15 (Back on the record at 5:48 p.m.)

16 VIDEOGRAPHER: We're back on the record at
17 5:49 p.m. Pacific. And this marks the beginning of
18 Media No. 6, deposition of Michael Moradian.

19 Please proceed, Counsel.

20 BY MR. POLAK:

21 Q. All right, so we're going to go back to
22 Exhibit 381. And this again is Dr. Tincher-Ladner's
23 declaration. This is the PTK Wikipedia page as it
24 existed on July 24, 2024. And we're going to go down
25 here and we're going to look at the Itawamba paragraph

1 that you have.

2 Starting with, in February 2024, all the way
3 through May 2023, are these your words?

4 A. I believe so.

5 Q. And this relates to the embezzlement
6 allegations concerning a Robin Lowe who worked over at
7 Itawamba Community College, right?

8 A. Yes, I believe --

9 MR. LINKE: Objection as to form.

10 THE WITNESS: Yes, I believe so.

11 BY MR. POLAK:

12 Q. Now, at the time that you made these edits, you
13 knew that Dr. Tincher-Ladner had already testified that
14 PTK advisers are not PTK employees, right?

15 THE COURT REPORTER: I'm sorry, did someone
16 speak? I didn't hear it.

17 MR. POLAK: I think Mr. Linke objected to form.

18 MR. LINKE: That's correct.

19 MR. POLAK: But the witness has not yet
20 answered.

21 THE COURT REPORTER: Thank you.

22 MR. LINKE: Objection as to form.

23 THE WITNESS: Can you please repeat the
24 question?

25 MR. POLAK: Ms. Langgle, could you read that

1 for Mr. Moradian.

2 THE COURT REPORTER: Yes.

3 (The last question was read back.)

4 MR. LINKE: Objection as to form.

5 THE WITNESS: Yes, I am aware that

6 Dr. Tincher-Ladner testified to that.

7 BY MR. POLAK:

8 Q. That was done at her deposition on February 28
9 of this year, correct?

10 A. I believe so.

11 Q. And you're not aware of any evidence that
12 contradicts that testimony, right?

13 MR. LINKE: Objection as to form.

14 THE WITNESS: I'm just unclear on what you're
15 asking because I don't see the relevance.

16 MR. POLAK: Ms. Langgle, could you please
17 reread the question again?

18 THE COURT REPORTER: Yes.

19 (The last question was read back.)

20 MR. LINKE: Same objection.

21 THE WITNESS: To be clear, this article states
22 that she's an advisor. Nowhere does it reference being
23 an employee.

24 MR. POLAK: Objection. Nonresponsive.

25 Ms. Langgle, could you reread the question for

1 the witness? Maybe he'll answer it this time.

2 THE COURT REPORTER: Yes.

3 (The last question was read back.)

4 MR. LINKE: Objection as to form.

5 THE WITNESS: I'm here to answer three
6 questions based on the 30(b)(6) request. And that's
7 what I'm here to answer, that's what I prepared for. I
8 don't see this within the scope of that.

9 BY MR. POLAK:

10 Q. Are you refusing to answer my question,
11 Mr. Moradian?

12 MR. LINKE: Objection as to form.

13 THE WITNESS: No.

14 BY MR. POLAK:

15 Q. Then answer it, please.

16 If you need it read back a third or fourth time
17 now, we can have it read back for you.

18 A. Please.

19 MR. POLAK: Okay. Ms. Langgle, would you
20 please reread the third or fourth time that same
21 question?

22 THE COURT REPORTER: Yes.

23 (The last question was read back.)

24 MR. LINKE: Objection as to form.

25 THE WITNESS: Can you please clarify what

1 testimony you're referring to?

2 BY MR. POLAK:

3 Q. Testimony that we just got done talking about
4 that you said you were aware of, that Dr. Tincher-Ladner
5 testified that PTK advisers are not PTK employees.

6 A. What was the question?

7 Q. Good lord. Mr. Moradian, answer the question.
8 Do you really want her to have to read it again, a
9 fourth or fifth time?

10 A. Sir, I'm trying to the best of my ability to
11 answer your questions. And you're asking compound
12 questions about a subject that I wasn't instructed to
13 prepare for, so I'm trying my best to answer. And I
14 appreciate you working with me so that I can give the
15 best answer possible.

16 Q. I don't think the question was compound. In
17 fact, I think it was subject verb direct object, to be
18 honest, but I will ask it again. You are aware of no
19 evidence that contradicts Dr. Tincher-Ladner's testimony
20 that PTK advisers are not PTK employees?

21 MR. LINKE: Objection as to form.

22 THE WITNESS: I don't believe so and I don't
23 believe that's a question.

24 BY MR. POLAK:

25 Q. Are you aware that PTK exercises no control

1 over the PTK advisers?

2 MR. LINKE: Objection as to form.

3 THE WITNESS: I don't believe that to be a true
4 statement.

5 BY MR. POLAK:

6 Q. Why not?

7 A. By definition, they can't exert no control,
8 their PTK advisers. They're operating under the
9 auspices of PTK.

10 Q. How do you define auspices?

11 A. Control.

12 Q. So what evidence do you have that PTK controls
13 the chapter advisers?

14 MR. LINKE: Objection. Outside the scope of
15 the 30(b)(6) deposition notice. Objection as to form.

16 THE WITNESS: I haven't prepared for this, so
17 I'll try to answer it to the best of my knowledge, but
18 if PTK designates who is an advisor or there is a
19 designation of PTK and there is some level of control of
20 who gets to be that advisor, whether by the college or
21 by PTK itself, there is a level of control because the
22 title has been conferred on that individual. And so
23 just by the behest of the title, there is some level of
24 control.

25

1 BY MR. POLAK:

2 Q. Nowhere in what you wrote in this section that
3 I've highlighted is there any statement by you that PTK
4 exercised no employer/employee control over Ms. Lowe; is
5 that right?

6 MR. LINKE: Objection as to form.

7 THE WITNESS: There wouldn't need to be such a
8 disclosure, especially because it doesn't say that.

9 And --

10 THE COURT REPORTER: I'm sorry, I couldn't --
11 you said there wouldn't need to be a disclosure
12 especially because it doesn't say that, and I didn't get
13 the rest of it.

14 THE WITNESS: It specifically states that she
15 is in an advisor role.

16 BY MR. POLAK:

17 Q. But the point you're making here in this edit
18 is that Robin Lowe engaged in this misconduct in her
19 capacity as some affiliation with PTK, right?

20 MR. LINKE: Objection as to form.

21 THE WITNESS: Would you mind -- well, I didn't
22 get the question. I'm sorry for that, can you please
23 quickly repeat it?

24 MR. POLAK: Could you repeat the question for
25 the witness, Ms. Langgle?

1 THE COURT REPORTER: Yes.

2 (The last question was read back.)

3 MR. LINKE: Objection as to form.

4 THE WITNESS: That's admittedly a hard train of
5 thought to follow.

6 BY MR. POLAK:

7 Q. Let me ask it a different way. Would it be
8 accurate or inaccurate for you to write here that PTK
9 experienced the embezzlement?

10 MR. LINKE: Objection as to form. Outside the
11 scope of the 30(b)(6) deposition notice.

12 THE WITNESS: That's not what it says here, so
13 that would be a hypothetical.

14 BY MR. POLAK:

15 Q. I'm just asking you if you had written it,
16 would that be accurate or inaccurate?

17 MR. LINKE: Objection as to form. Objection as
18 being beyond the scope of the 30(b)(6) deposition
19 notice.

20 THE WITNESS: I would have to speculate, and I
21 don't feel comfortable speculating.

22 BY MR. POLAK:

23 Q. What is it about that that causes you to have
24 to speculate?

25 A. Well --

1 Q. Well, let me ask it a different way. Would you
2 ever write that the society experienced the
3 embezzlement? Is that your point here when you wrote
4 this, that the society experienced the embezzlement?

5 MR. LINKE: Objection as to form.

6 THE WITNESS: Sir, I'm working to aid you as
7 much as I can. And so I'll just blanket statement to
8 save you time, and I don't feel comfortable speculating.
9 So if you ask me speculative questions, I don't feel
10 comfortable, but if you ask me questions that are
11 substantive on the elements here, I will be happy to
12 answer them as best I can.

13 MR. POLAK: Object as nonresponsive.

14 BY MR. POLAK:

15 Q. I'm not asking you to speculate. I'm asking
16 you whether or not it would be appropriate -- well, let
17 me ask it a different way for you.

18 Is the point that you're trying to make with
19 this language here that I've highlighted that PTK
20 experienced the embezzlement?

21 MR. LINKE: Objection as to form.

22 THE WITNESS: I'm not trying to make any point.
23 There are 10 articles that I counted there, 10
24 individual notable news reported articles, including the
25 Mississippi Department of Justice I believe that was the

1 basis for these statements, so I'm just working with the
2 notable, verifiable and reliable sources.

3 BY MR. POLAK:

4 Q. Did you want, when you wrote this, for some
5 reader to think that PTK was responsible for the
6 embezzlement?

7 MR. LINKE: Objection as to form.

8 THE WITNESS: Definitely not, no.

9 BY MR. POLAK:

10 Q. Why not?

11 A. I don't want PTK to have issues. I like the
12 idea of PTK. I like the idea of Dr. Lynn
13 Tincher-Ladner, but what is here again is a matter of
14 truthfulness, objectivity and reportability here. I
15 didn't write these statements, I didn't make the 10
16 sources. And simply a contribution that was -- I was
17 asked to contribute into this whole category of
18 Wikipedia, I'm just doing the best that I can to help
19 people get a more objective viewpoint. And I don't
20 wish -- I don't wish that this was true. I wish that it
21 wasn't true, but I -- the 10 sources that we listed here
22 tell the story, and that's where you should be looking.

23 Q. But in the language that you write here, you
24 don't state anything about how PTK had nothing to do
25 with the embezzlement, do you?

1 MR. LINKE: Objection as to form.

2 THE WITNESS: Would you mind, for context,
3 clicking, going up and clicking on the top link, up to
4 the top of the page? Oh, this is -- yeah, let's go to
5 the live version.

6 BY MR. POLAK:

7 Q. Here?

8 A. Yes, please. Let's please go down. Okay.
9 Right here.

10 The last statement there, member and chapter
11 misconduct is a standard section for articles that fall
12 under Wikipedia fraternities and sororities. Misconduct
13 does not have to be national to be included. In fact,
14 it is rarely national, but does require independent
15 sources.

16 Some instances do not rise to the level of
17 being notable to be included. Because this incident has
18 coverage, resulting in criminal charges and happened
19 this year, it does seem to be worthy of inclusion for
20 now. Signed off by Rublamb.

21 And so I think that again will save us time and
22 save you time because that's the interpretation and the
23 validation of independent third party moderator of
24 Wikipedia. And I didn't write that, I have nothing to
25 do with that, but that is the understanding. And I

1 think it is important that we all understand that.

2 Q. Do you remember Judge Reeves addressing this
3 issue of misleading statements your organization has
4 made concerning the Itawamba embezzlement allegations?

5 MR. LINKE: Objection as to form.

6 THE WITNESS: Are you referring to the
7 August 22 statement?

8 BY MR. POLAK:

9 Q. I am.

10 A. Yes, I'm familiar with those.

11 Q. What do you recall Judge Reeves saying?

12 A. Well, August 22 is beyond the time horizon of
13 Wikipedia, so this is a space time continuum issue
14 again, but I wouldn't have been aware of what was --
15 what I'm about to say at the time of Wikipedia because
16 it didn't exist at that time.

17 But what I can tell you now, to answer your
18 question, is that I'm aware that, you know, he wrote
19 about it and asked for a disclaimer and that the
20 disclaimer be added to articles and that Wikipedia not
21 be edited. And that we have -- I have honored and
22 complied with that to the fullest of my ability.

23 Q. Do you believe that the language that we looked
24 at that you wrote, concerning these Itawamba
25 circumstances, was misleading in any way?

1 MR. LINKE: Objection as to form.

2 THE WITNESS: No, sir, I don't believe so.

3 BY MR. POLAK:

4 Q. Well, let's look at what Judge Reeves had to
5 say about that. This is the order, go ahead and show
6 you the top here. This is Exhibit -- well, we've looked
7 at that already, haven't we? Yeah, sorry. Exhibit 382.
8 And I'm going to take you to page 12 where Judge Reeves
9 is telling you: One post created without right or
10 justifiable cause was Honor Society's article about
11 Robin Lowe, a PTK chapter advisor at Itawamba Community
12 College who was arrested for allegedly embezzling funds.

13 Honor Society's post makes Lowe appear as a PTK
14 employee, when in fact PTK campus advisers are employees
15 of community colleges. The advisor role is an unpaid
16 volunteer. Dr. Tincher-Ladner testified to this in her
17 February deposition. Moradian was present when she
18 explained it. There is no factual basis for Honor
19 Society's claim.

20 Do you agree or disagree with Judge Reeves
21 finding there?

22 MR. LINKE: Objection as to form.

23 THE WITNESS: Sir, it is important to note that
24 your question started with did you realize, which
25 implies at the moment in time it was written did I

1 realize. That occurred in July, and now your reading
2 statements in August 22 and you're asking me if I now
3 realize in July something that occurred in the future.
4 And unless you know something about the time space
5 continuum, that's physically impossible. There is no
6 way in July, when Wikipedia was at issue, I would have
7 known what was going to be written five to six weeks
8 later.

9 So you're conflating two things and I'm trying
10 my best here, but it's just not fair to -- to take a
11 question in one moment of time, did I realize what I'm
12 writing. And then now read something that occurred five
13 weeks in the future and say, look, you didn't
14 acknowledge that. I can't acknowledge things that don't
15 exist in the present moment, so I'm trying my best here.

16 MR. POLAK: Objection. Nonresponsive.

17 Ms. Langgle, could you please read the question
18 for Mr. Moradian?

19 THE COURT REPORTER: Yes.

20 (The last question was read back.)

21 MR. LINKE: Objection as to form.

22 THE WITNESS: This is outside of the scope of
23 what I prepared for for this 30(b)(6). I -- I prepared
24 to answer three questions and I'm fully prepared to
25 answer those, but this is just outside of that.

1 BY MR. POLAK:

2 Q. Are you refusing to answer the question,
3 Mr. Moradian?

4 MR. LINKE: Objection as to form.

5 THE WITNESS: No, sir, but you're striking my
6 answers as nonresponsive.

7 MR. POLAK: Well, I haven't stricken that
8 answer yet because you haven't given me one. You just
9 told me you don't want to answer it. So are you going
10 to answer my question? Which is, do you agree with
11 Judge Reeves findings there in that paragraph?

12 MR. LINKE: Objection as to form. Objection as
13 being outside the scope of the noticed 30(b)(6)
14 deposition topics.

15 THE WITNESS: I have complied with it fully.

16 BY MR. POLAK:

17 Q. I'm not asking you whether you complied with
18 it. I'm just asking you whether there is anything in it
19 that you disagree with?

20 MR. LINKE: Objection as to form. Objection as
21 being outside the scope of the noticed 30(b)(6)
22 deposition topics.

23 THE WITNESS: I'm really not in a position to
24 answer that.

25

1 BY MR. POLAK:

2 Q. What prevents you from answering my question as
3 to whether you agree or disagree with anything in that
4 paragraph?

5 MR. LINKE: Objection as to form. Objection as
6 to being outside the scope of the noticed 30(b)(6)
7 deposition topics.

8 THE WITNESS: I prepared today for the 30(b)(6)
9 to answer the three questions that you required my
10 testimony. The issues that you're touching on here
11 reached to other parts of the litigation, which are at
12 play right now. And I don't feel comfortable stepping
13 outside of my preparation to answer questions not
14 related to what I prepared for today.

15 BY MR. POLAK:

16 Q. Mr. Moradian, part of the reason why we're here
17 is because Judge Reeves himself asked us to take your
18 deposition to find out your intent when you made these
19 changes to the Wikipedia pages. That includes looking
20 at not only your intentions, but what was in your head
21 at the time that you made them.

22 We're also entitled to look at whether or not
23 you have an understanding as to whether or not the
24 statements that you made were misleading or false
25 because that goes to the issue of malice. I shouldn't

1 have to explain that because I don't have to explain it
2 to you, but I'm stating it for you here so you
3 understand the reasons why I'm asking you these
4 questions.

5 And absolutely yes, you need to be able to
6 answer the question as to whether or not you see
7 anything incorrect in Judge Reeves paragraph there. So
8 I'm going to ask you one more time: Do you see anything
9 in that paragraph that is untrue?

10 MR. LINKE: Objection as to form. And
11 objection as being outside the scope of the noticed
12 30(b)(6) deposition topics.

13 BY MR. POLAK:

14 Q. Are you going to answer my question,
15 Mr. Moradian?

16 A. I'm trying my best to answer it.

17 Q. Well, I've been sitting here for about 30
18 seconds waiting for an answer, notwithstanding the other
19 five minutes that I've been trying to get an answer from
20 you and I still don't have one.

21 A. I'm just simply not prepared to answer things
22 outside of what I prepared for. And, you know, you're
23 asking me now about a statement that was not in
24 existence when the Wikipedia issue happened, so it's
25 really hard -- I mean, this is a hypothetical. You're

1 now asking something about six or eight weeks later and
2 trying to use this to show my intent of something that
3 occurred six or eight weeks earlier. And it's just
4 impossible to draw the line like -- direct connection to
5 this statement to what was going on in Wikipedia, it's
6 just not appropriate.

7 Q. You can make your legal argument, you can have
8 your lawyer make your legal argument, but the question
9 is do you have an answer to my question? Is there
10 anything in this paragraph that is untrue factually?

11 MR. LINKE: Objection as to form. Objection as
12 to being outside the scope of the noticed 30(b)(6)
13 deposition topics.

14 THE WITNESS: I don't know.

15 BY MR. POLAK:

16 Q. Okay. Part of what Judge Reeves is telling you
17 here, is that the post that was at issue here was made
18 without right or justifiable cause. Quote -- quote,
19 without right or without justifiable cause, end quote.

20 And he goes on to say that Honor Society's post
21 makes Lowe appear as a PTK employee, when in fact PTK
22 campus advisers are employees of community colleges.

23 Do you disagree that the post at issue there
24 made it appear as if Lowe was a PTK employee, not an
25 employee of the community college that she worked for?

1 MR. LINKE: Objection as to form. And
2 objection as being beyond the scope of the 30(b)(6)
3 deposition topics.

4 Mr. Polak, this is getting past the border of
5 harassment. And I'm getting close to instructing the
6 witness not to answer. This question isn't even about
7 the Wikipedia pages, it is about something else
8 entirely. I've been very patient. This has nothing to
9 do with the 30(b)(6) topics.

10 MR. POLAK: You can answer -- I've already
11 explained it.

12 BY MR. POLAK:

13 Q. You can explain it, Mr. Moradian.

14 THE WITNESS: May you please repeat the
15 question?

16 MR. POLAK: Okay. We will have a conversation
17 with Judge Meyers about this at some point, I promise
18 you. If you don't want to answer my question, you don't
19 want to point out or explain the answers to my
20 questions, I'm going to mark that as non -- as an answer
21 that you refused to answer as a question you refused to
22 answer because you're not answering it.

23 So will you at least agree with me that
24 Judge Reeves is sitting here telling you in this order
25 that it is without right or justifiable cause to make

1 any implication that -- that PTK employs the PTK
2 advisers as opposed to the community colleges?

3 MR. LINKE: Objection as to form. Objection as
4 being outside the scope of the 30(b)(6) deposition
5 topic.

6 Jonathan, I'm going to instruct the witness not
7 to answer this. Judge Meyers directed the parties, and
8 you personally, on behalf of PTK, agreed to limit this
9 deposition strictly to the subjects of the 30(b)(6)
10 deposition topic and Judge Reeves' instructions as to
11 discovery. This has nothing to do with the Wikipedia
12 page. We've been extremely patient. Please ask about
13 the Wikipedia page or the issues related to that during
14 the deposition notice.

15 MR. POLAK: Derek, you are violating the
16 agreement. If you want to instruct him not to answer,
17 just simply instruct him not to answer.

18 BY MR. POLAK:

19 Q. Mr. Moradian, are you going to take your
20 lawyer's advice and not answer my question?

21 A. Yes.

22 Q. Okay. I'm going to show you the next page of
23 Judge Reeves' order, starting with the conclusion is
24 simple. And he writes: The conclusion is simple, Honor
25 Society chose to describe an Itawamba Community College

1 employee who allegedly took public funds and made it
2 look as though a PTK employee took money from PTK
3 members, all to further Honor Society's scheme to injure
4 PTK. Do you see where I read that?

5 A. I see where you read that.

6 Q. All right. Is it your view that the changes
7 that you made to the Wikipedia page for PTK did not do
8 exactly what it is that Judge Reeves says that you did
9 on the websites that you created?

10 MR. LINKE: Objection as to form.

11 THE WITNESS: Whatever is written or described
12 here would not reflect upon the July 2024 Mike Moradian
13 because he had not read this statement at that time, so
14 it would be impossible for me to comment on -- at that
15 time continuum that this was a statement that crossed my
16 mind.

17 BY MR. POLAK:

18 Q. You told me that -- first of all, that's not
19 what I asked, I didn't ask you whether this statement
20 crossed your mind, so I object to that as nonresponsive.

21 You told me, Mr. Moradian, that you saw nothing
22 wrong with the language that we looked at on -- on what
23 was Exhibit E-7 of Dr. Tincher-Ladner's declaration,
24 right? Those words that we looked at, you saw nothing
25 wrong about them. You saw nothing misleading about

1 them, right?

2 MR. LINKE: Objection as to form.

3 THE WITNESS: You're just referring to those
4 words. I don't know what "those words" is referring to.

5 BY MR. POLAK:

6 Q. The words about -- I'll read them to you. In
7 February 2024, Robin Lowe, a former advisor for the PTK
8 chapter at Itawamba Community College, was charged with
9 embezzlement of public funds meant to benefit the PTK
10 chapter. Lowe was the chapter advisor for Phi Theta
11 Kappa for 15 years, from 2008 to May of 2023. That's
12 the language I'm talking about. So what's the answer to
13 my question?

14 A. Sir, I have no idea what your question is.

15 Q. Well, I'm glad we waited 20 seconds for you to
16 tell me that, but you can delay it as long as you want
17 and keep playing that delay game. And the fact that you
18 did not answer the question for, pretty much guarantees
19 that we're gonna be taking this up with Judge Meyers. I
20 cannot wait to share with him this transcript, it's like
21 nothing I've ever seen.

22 So, Ms. Langgle, could you please read for the
23 witness the question before the last question?

24 THE COURT REPORTER: Yes.

25 (The last question was read back.)

1 MR. LINKE: Objection as to form.

2 THE WITNESS: I try my best here, but I -- can
3 you put on display where you're talking about? That --
4 I have no context again what -- what are we even talking
5 about? Those words could be anything. Can you show me
6 the same you're referring to and ask me a question while
7 referring -- using that statement.

8 BY MR. POLAK:

9 Q. Well, I read it to you, but we'll put up here
10 on the screen.

11 A. Is there an outstanding question?

12 Q. Judge Reeves wrote: The conclusion is simple.
13 Honor Society chose to describe an Itawamba Community
14 College employee who allegedly took public funds and
15 made it look as though a PTK employee took money from
16 PTK members all to further Honor Society's scheme to
17 injure PTK.

18 Isn't that what you did here with these
19 Wikipedia edits?

20 MR. LINKE: Objection as to form.

21 THE WITNESS: I don't know how much more clear
22 I can be, and I'm really trying my best here, but there
23 is no way that that statement, August 22, is what I was
24 trying to do here because it didn't exist at this time.
25 So to ask me isn't that saying what this is, the answer

1 is no, because it didn't -- that statement didn't exist
2 at this time. It's as simple as that.

3 And no, the intent was not that. And I respect
4 Judge Reeves fully. There is no -- since he hadn't said
5 what he said for five more weeks, there is no way that
6 could play a role into writing or crafting this message.

7 BY MR. POLAK:

8 Q. Do you agree with me at the time that you made
9 this post -- I'm sorry, these edits to the Wikipedia
10 page, you knew that Ms. Lowe was an employee of Itawamba
11 Community College and not --

12 MR. LINKE: Objection. Objection as to form.

13 THE WITNESS: My general understanding, and I
14 believe it's the public's understanding to my knowledge,
15 is that when we talk about an advisor of a PTK chapter
16 at Itawamba Community College, that is self-explanatory
17 that it is an advisor that works at Itawamba Community
18 College and was an advisor for PTK chapter. And so the
19 statement in and of itself is true and representative,
20 so...

21 MR. POLAK: Objection. Nonresponsive.

22 Ms. Langgle, could you reread the question,
23 please?

24 THE COURT REPORTER: Yes.

25 (The last question was read back.)

1 THE WITNESS: Yes, I did know that. And yes,
2 it was explicitly stated as such in the edit.

3 BY MR. POLAK:

4 Q. Where does it say that in this edit that
5 Ms. Lowe is an employee of Itawamba Community College
6 and not an employee of PTK?

7 A. Well, the general understanding, a chapter is
8 that it is a registered student organization. It is not
9 an -- it is not a part of the Itawamba Community
10 College. And the advisers are employees of all
11 registered student organizations of the community
12 college they serve. That -- I mean, that's just the
13 general understanding of the verbatim text. And I --
14 and, you know, that -- it doesn't -- it doesn't read to
15 the counter of what the general understanding of those
16 words would be.

17 Q. We're going to look at Exhibit 383, which is
18 Exhibit E-1 to Dr. Tincher-Ladner's declaration. And
19 these revisions -- we've looked at this document
20 already, revisions that existed as of July 22, just two
21 days before what we were looking at before, right? And
22 we scroll down and we look at what you wrote this time
23 that was visible for a period of time. You wrote the
24 society has experienced embezzlement. You wrote that,
25 didn't you?

1 A. Based on them -- it being green within this
2 passage, I would -- I believe I would agree with that.

3 Q. It is an untrue statement that the society
4 experienced embezzlement because it was the community
5 college that experienced the embezzlement, right?

6 MR. LINKE: Objection as to form.

7 THE WITNESS: Well, according to Chad White, I
8 believe his name is, of the Mississippi Department of
9 Justice I believe, which is linked to in this article, I
10 would love to pull that up and read what he wrote. This
11 is the government official who is notable, reliable and
12 verifiable. And to my understanding, he described it
13 similar to that. And further, Rublamb also made clear
14 his third party take as the authority in this space of
15 how that ties into a general society issue.

16 MR. POLAK: Objection. Nonresponsive.

17 Can you read the question back, please,
18 Ms. Langgle?

19 THE COURT REPORTER: Yes.

20 (The last question was read back.)

21 MR. LINKE: Objection as to form.

22 THE WITNESS: I don't believe so.

23 BY MR. POLAK:

24 Q. You don't believe that that statement, the
25 society has experienced embezzlement is untrue?

1 A. I don't.

2 MR. LINKE: Objection as to form.

3 BY MR. POLAK:

4 Q. What is it that -- what is it that makes that
5 statement, true?

6 A. The fact that it is a PTK chapter and it
7 explicitly discusses PTK funds, that the Mississippi
8 Chad White specifically called it out and is verifiable,
9 it is notable and it is objective. So therefore, that's
10 the basis of my belief that -- of that -- in that
11 statement.

12 Q. And so what you were trying to convey with the
13 other edit that we looked at just a second ago, the
14 later version, was to convey that the society had
15 experienced embezzlement, right?

16 MR. LINKE: Objection as to form.

17 THE WITNESS: In one way or another, the
18 society has experienced embezzlement.

19 BY MR. POLAK:

20 Q. Now, we talked before about the back and forth
21 that was going on through these edits between what you
22 were doing versus what Phi Theta Kappa was doing, right?

23 A. I believe so.

24 Q. And you were aware that when you would make a
25 change, Phi Theta Kappa would then go and make a change

1 and then you said at least on one occasion you made an
2 additional change, right?

3 A. I believe what you're referring to is undoing
4 revision. And yes, I believe that would be a correct
5 statement.

6 Q. What I'm going to show you is again live on the
7 Wikipedia revision history. And it is your
8 understanding that Coralreef was PTK related?

9 A. Her -- Dr. Lynn Tincher-Ladner's declaration,
10 yes.

11 Q. Okay. And we don't see Coralreef down here in
12 April 2024, May 2024, June 2024, early July of 2024, all
13 of those changes are being made to PTK's Wikipedia page
14 and PTK isn't attempting any changes, right?

15 MR. LINKE: Objection as to form.

16 THE WITNESS: I can't speak to PTK's activities
17 or inactivities.

18 BY MR. POLAK:

19 Q. Okay. Well, we can look at these things.
20 You're making -- you made a change here on April 16,
21 let's just keep scrolling up here, right? You can see
22 my cursor. Objectivity, objectivity, objectivity, then
23 we get CanonNi, do you know who -- do you think that's
24 associated with PTK?

25 A. It could be. I have no basis one way or

1 another.

2 Q. If Dr. Tincher-Ladner says it is not her or
3 anyone at Honor Society -- I'm sorry, at PTK, you
4 wouldn't have any reason to dispute that, would you?

5 MR. LINKE: Objection as to form.

6 BY MR. POLAK:

7 Q. I'm just asking you, do you have any reason to
8 dispute that if that's what she said?

9 A. Objection as to form.

10 THE WITNESS: Well, considering that -- I'm
11 sorry if this comes across wrong, or I don't intend this
12 to be hurtful, I'm speaking out of a place of respect
13 and truthfulness, but considering that she's made a
14 multitude of false statements, it doesn't necessarily,
15 just her saying something alone would not move me one
16 way or another.

17 BY MR. POLAK:

18 Q. Okay. So we're looking here at your other
19 changes in April. We see Rublamb come up, we see you
20 again, we see these others. But we don't see Coralreef
21 emerge until July 22. And Coralreef made changes at
22 9:37 p.m., again at 9:41 p.m. And then fairly quickly
23 you made a bunch of changes as well, just not an hour to
24 an hour-and-a-half later, right?

25 A. It looks like about two hours later, that's

1 correct.

2 Q. When somebody does something to changes that
3 you make on Wikipedia, do you get some sort of email or
4 notice or message?

5 A. Can you rephrase that question?

6 Q. No.

7 A. I'll answer to the best of my ability.

8 Q. I would hope so. Please do.

9 A. When you say do you, I'm not clear as to
10 whether you're referring to me individually or the
11 general you.

12 Q. You, you, Mr. Moradian, Mr. WikiObjectivity, do
13 you get a message or an email or some type of
14 communication letting you know that someone has done
15 something with respect to something that you've changed
16 on Wikipedia?

17 MR. LINKE: Objection as to form.

18 THE WITNESS: My knowledge, the WikiObjectivity
19 logged in page would get a notification similar to a
20 Facebook notification or an Instagram notification,
21 prompting that there is one pending change. And that's
22 the only knowledge I would have of it.

23 BY MR. POLAK:

24 Q. Okay. And so it's likely then that you got
25 some sort of notification of Coralreef's changes and you

1 went back online that night and made four additional
2 changes; is that right?

3 MR. LINKE: Objection as to form.

4 BY MR. POLAK:

5 Q. Three additional changes. Thank you.

6 MR. LINKE: Objection as to form.

7 THE WITNESS: I don't know what all those
8 changes are, but I do know that there is one undoing the
9 revision by Coralreef, which looks like it occurred
10 two hours later, which is in contrast to Coralreef
11 above, where Viewmont Viking undo of the revision
12 one minute later. So I wouldn't say I was as diligent
13 as Viewmont Viking. I don't know if two hours is slow
14 or fast, I have no basis. The only basis I have is
15 one minute response time versus two-hour response time.

16 BY MR. POLAK:

17 Q. I don't know that I was commenting on the
18 speed. I was really just kind of noting the amount of
19 time that transpired between when Coralreef made the
20 change to when you've made changes to undue those.

21 Then Coralreef goes back in and the next -- I
22 guess later that night -- no, later, later the next day,
23 goes and tries to undo those changes that you undid of
24 hers, right? So there is back and forth here, right?

25 A. Is the question there's back and forth here?

1 Q. Sure.

2 A. Yes, to my knowledge there is back and forth.
3 I believe if you click on Coralreef78, there will be
4 further explanation.

5 Q. Okay. And then this Viewmont Viking gets
6 involved. Have you had any communications with Viewmont
7 Viking about the edits that were being made here?

8 A. I believe the only communication would be
9 what's on this chain, so --

10 Q. Is Viewmont Viking a moderator or an
11 administrator for Wikipedia?

12 A. I'm not sure the exact status. I don't know
13 who this individual is.

14 Q. Have you had any interaction with Viewmont
15 Viking other than what is in connection with the PTK
16 Wikipedia page?

17 A. No.

18 Q. Do you know whether these posts that were on
19 July 23 by Viewmont Viking were the first? We can
20 scroll down here to see. I don't see Viewmont Viking
21 going back into 2021 or any of that, so do you know
22 whether Viewmont Viking had ever previously taken an
23 interest in PTK's page?

24 A. I would have to look at the entire history to
25 be able to fully answer that, but I do believe, based on

1 my memory, that Viewmont Viking belongs to the editor
2 group of Wiki fraternities and sororities, and so it is
3 involved with the general category.

4 Q. They're the ones that invited you to join them?

5 A. Rublamb is the leader, to my knowledge, and
6 he's the one that invited me to join it because of my
7 valuable contributions. I don't know whether or not, I
8 can't confirm whether or not Viewmont Viking was
9 involved with that, knew about it or contributed to it
10 in any way.

11 Q. Okay. So there are these interactions here
12 between Coralreef and Viewmont Viking, this -- from
13 JohnFromPickney gets involved, Makemyday1918 gets
14 involved, but then you get back involved again. And we
15 look at this, which we've already talked about, where
16 you are accusing Makemyday1918 of point view washing and
17 vandalism; is that right?

18 A. Would you mind scrolling down a little bit,
19 please? A little bit more, please? Would you mind
20 scrolling a little bit up? I'm sorry. Okay. July 23,
21 1416 Viewmont Viking used the term POV pushing. And
22 that was the basis for -- I think washing is a little
23 less forceful actually than pushing, but I -- so I
24 didn't originate that claim, it was -- the claim was
25 originally made by an independent third party Viewmont

1 Viking, and I simply corroborated that.

2 MR. POLAK: Objection. Nonresponsive.

3 BY MR. POLAK:

4 Q. So you have this back and forth down here,
5 Viewmont Viking gets involved, but then you pop back up
6 on July 24 and you make the statement that you did here
7 about PTK. Why didn't you just let that go?

8 MR. LINKE: Objection as to form.

9 THE WITNESS: Sir, have you not listened to
10 anything that I've been talking about for the last
11 six hours? The whole point of Wikipedia is about
12 neutrality, verifiability and reliability. And to --

13 THE COURT REPORTER: I'm sorry, the point of
14 Wikipedia is?

15 THE WITNESS: Verifiability, reliability and
16 notability and to take a blanket advertisement and throw
17 that as a Wikipedia page op is in violation of the FTC
18 Act of 1914. It was a -- and to that extent, I believe
19 you and Dr. Tincher-Ladner should be thanking me, to the
20 extent that I'm helping prevent them from, you know, a
21 serious violation of FTC Act of 1914, so yeah, you're
22 welcome.

23 BY MR. POLAK:

24 Q. So you didn't let it go because you were trying
25 to protect PTK from violating some Act from over

1 100 years ago?

2 MR. LINKE: Objection as to form. Objection as
3 to form.

4 THE WITNESS: Sir, that is not some Act from
5 100 years ago. That's the basis of advertising. That's
6 the basis of false advertising, false statements. And
7 for me to go out of my way to remove statements that are
8 unambiguously in violation of that is a huge favor and a
9 huge benefit to both PTK and Dr. Tincher-Ladner.

10 BY MR. POLAK:

11 Q. What other organizations have you in 2024
12 identified false advertising by them in any way, other
13 than PTK?

14 A. Well, I think to some extent, 42 societies were
15 marked as using blue and gold as their primary colors,
16 42 honor societies. So, you know, I'll go ahead and,
17 you know, to that effect, I was protecting the
18 distinctiveness you could argue from your perspective of
19 these 41 other societies that were falsely using the
20 distinctive trade dress by your definition of PTK.

21 But other than that, there was also the usage
22 of wreaths that I -- over 20 honor societies were using,
23 but by your definition, again, those would be 19 engaged
24 in false origination of source. So I believe those --
25 those were called out. I believe that the Ku Klux Klan

1 Honor Society had issues that were brought up and
2 brought to light. The Honor Society caucus demonstrated
3 issues that were discussed and analyzed. The
4 Association of College Honors Societies to some extent
5 faced the same issues. The general Honor Society page,
6 you know, had similar issues.

7 We added information, I, about the Bouchet
8 Graduate Honor Society, which was in order to help
9 clarify the space and prevent false issues. So I would
10 just generally say that this has been highly active
11 across the space and not at all, you know, targeted one
12 way or another. This is purely a truthful exercise in
13 order to create objectivity, neutrality, verifiability
14 and reliability.

15 Q. Are you familiar with the honor society, not
16 your organization, but the name for the type of
17 organization Honor Society Wikipedia page?

18 A. I believe I just referenced that as a page,
19 yes.

20 Q. Did you make any changes to that page?

21 A. I believe so, yes.

22 Q. What changes do you recall making to that one?

23 A. Well, I believe -- I haven't looked at that
24 page recently, so I don't know what their current status
25 is, but to my recollection there was contact around the

1 inclusive nature of the Bouchet Graduate Honor Society
2 by Yale and Howard that was added to the page. There
3 was context surrounding the Ku Klux Klan Honor Society,
4 as well as systemic bias and structural racism that has
5 played a role in traditional honor societies that may be
6 referenced there.

7 I believe there might have been clarifications
8 around the voluntary nature of ACHS and how the Honor
9 Society caucus exists outside of the ACHS and outside of
10 the purview of that. I don't know if I wrote about how
11 Sigma Xi, which is X-i, does not require any GPA
12 requirements. I believe we touched on the colors,
13 perhaps, of societies that were listed on that page to,
14 you know, make sure that they correctly delineate the
15 colors of the organizations, dozens of which included
16 blue and gold as their primary colors.

17 Q. Do you know whether your organization is
18 identified as an Honor Society on that page?

19 A. Well --

20 MR. LINKE: Objection as to form. Objection as
21 being outside the scope of the 30(b)(6) deposition
22 topics.

23 THE WITNESS: I wouldn't write about my
24 organization because we know that's a conflict of
25 interest and we respect that, so I know that I haven't

1 written about it on that page, but --

2 BY MR. POLAK:

3 Q. But didn't you write about your own
4 organization when you talked about the lawsuit that
5 exists with PTK?

6 A. I didn't make a Wikipedia page about my own
7 company.

8 Q. It's not my question, though, that I asked you
9 before. What I asked you is why haven't you made any
10 edits to have your organization included on the Honor
11 Society page that we're talking about?

12 MR. LINKE: Objection as to form. Objection as
13 being outside the scope of the 30(b)(6) deposition
14 topics.

15 THE WITNESS: I'm not sure I understand the
16 question.

17 BY MR. POLAK:

18 Q. We've already established that your
19 organization is not identified as an honor society on
20 the Honor Society Wikipedia page, right?

21 MR. LINKE: Objection as to form. Objection as
22 being outside the scope of the 30(b)(6) deposition
23 topics.

24 BY MR. POLAK:

25 Q. Here, I'm going to show you. This is the Honor

1 Society Wikipedia page. Down here there is a list of
2 collegiate honor societies. And you know your
3 organization is not identified here, right?

4 MR. LINKE: Objection as to form. Objection as
5 being outside the scope of the 30(b)(6) deposition
6 topics.

7 BY MR. POLAK:

8 Q. Right?

9 A. I mean, this is -- nowhere does it represent
10 this to be a comprehensive list of honors societies
11 and --

12 Q. That's not my point, Mr. Moradian. I didn't
13 ask you whether it was intended to be a comprehensive
14 list. I just asked you whether your organization is
15 identified here and it is not, is it?

16 MR. LINKE: Objection as to form. Objection as
17 being outside the scope of the Rule 30(b)(6) deposition
18 topics.

19 THE WITNESS: I don't know why you're asking me
20 about it. You seem to have answered it yourself.

21 BY MR. POLAK:

22 Q. Mr. Moradian, answer my question. You know
23 that your organization is not listed on this Wikipedia
24 page, right? Just yes or no.

25 MR. LINKE: Objection as to form. Objection as

1 being outside the scope of the Rule 30(b)(6) deposition
2 topics.

3 THE WITNESS: Yes, and we're fine with that.

4 BY MR. POLAK:

5 Q. Why have you not tried to add honor society to
6 this page? You made all these edits about PTK on PTK's
7 page. Why have you not tried to edit this to include
8 your organization?

9 MR. LINKE: Objection as to form. Objection as
10 being outside the scope of the Rule 30(b)(6) deposition
11 topics.

12 THE WITNESS: Why would we?

13 BY MR. POLAK:

14 Q. Is that your only answer? Why did you create
15 the Ku Klux Klan Honor Society Wiki?

16 MR. LINKE: Objection as to form. Objection as
17 being outside the scope of the 30(b)(6) deposition
18 notice.

19 THE WITNESS: That is outside for what I
20 prepared for today to testify on the three subjects.

21 BY MR. POLAK:

22 Q. Mr. Moradian, you have mentioned it no less
23 than 10 times today. You're the one who brought it up,
24 I didn't. So I'm asking you, why did you create the Ku
25 Klux Klan Honor Society Wiki?

1 MR. LINKE: Objection as to form. Objection as
2 being outside the scope of the Rule 30(b)(6) deposition
3 topics.

4 THE WITNESS: Because you're asking me, I will
5 answer. The answer is simply because it is a
6 verifiable, reliable and notable piece of traditional
7 honor society history. This occurred far before my
8 parents were born. This -- and no less, this is truth
9 and this is history.

10 There is no way that I or anybody that I knew
11 had a role in this truthfulness, you know, part of
12 history, but it -- it is disingenuous to sit here and
13 say that what was going on in the south or at that time
14 period, did not have a role in honor societies and
15 traditional honor societies.

16 The fact that PDK did not allow
17 African-Americans or women or Jews or other minorities
18 to join. The fact that PTK did not allow men to join,
19 this is all a sign of the times. I'm not blaming it on
20 the societies, but it is true and it is a fact, and it
21 is a fact that you need to acknowledge -- people need to
22 acknowledge, in order to understand the past, in order
23 to understand where we are today and in order to move
24 forward. And so that is critical piece of analysis that
25 you are trying to reject, and thus hurting the

1 truthfulness, verifiability and reliability of history.

2 BY MR. POLAK:

3 Q. Has your Ku Klux Klan Honor Society Wiki talk
4 about PTK?

5 MR. LINKE: Objection as to form. Objection as
6 being outside the scope of the Rule 30(b)(6) deposition
7 topics.

8 THE WITNESS: I haven't prepared for that. It
9 is outside the scope of these questions.

10 BY MR. POLAK:

11 Q. You just got through telling me all sorts of
12 information about it and you mentioned it a bunch of
13 times in this deposition. Apparently, in response to
14 some questions that I've already asked, you must think
15 it is relevant.

16 Do you recall whether there is any mention of
17 PTK on the Ku Klux Klan Honor Society Wikipedia?

18 MR. LINKE: Objection as to form. Objection as
19 being outside the scope of the Rule 30(b)(6) deposition
20 topics.

21 THE WITNESS: I don't recall, but if you have
22 something that would imply otherwise or show otherwise,
23 I would be happy to discuss it, but I don't recall and I
24 don't believe so.

25 THE COURT REPORTER: Counsel, if we're going to

1 go to another subject, can I take a five, please?

2 MR. POLAK: Absolutely.

3 VIDEOGRAPHER: Standby. This marks the end of
4 Unit No. 6. Going off the record at 7:02 p.m. Pacific.

5 (Off the record at 7:02 p.m.)

6 (Back on the record at 7:15 p.m.)

7 VIDEOGRAPHER: We are back on the record at
8 7:15 p.m. Pacific. And this marks the beginning of
9 Media No. 7, deposition of Michael Moradian.

10 Please proceed, Counsel.

11 BY MR. POLAK:

12 Q. Mr. Moradian, you've mentioned previously that
13 you have attempted to create a blue and gold Honor
14 Society Wikipedia page. What were you referring to?

15 A. It's not a Wikipedia page, it's a category.

16 Q. What does that mean? How is a category
17 different than a page?

18 A. So category is a term used to -- I hate
19 defining a word with itself, but to categorize certain
20 items. And so, you know, you may look at a category,
21 you know, born in the year 2000. And celebrities that
22 are born in the year 2000 would all fit that category.
23 Or nonprofits in Mississippi, you know, that could be a
24 category.

25 And, you know, to that effect, blue and gold

1 honor societies may be considered a category. I'm not
2 the expert or the judge of that, but there were 42 that
3 were categorized as such and that Wikipedia basically,
4 you know, determined that it was not a unique enough
5 descriptor, it was a generic descriptor from what I
6 understand. And so they wouldn't base a category on
7 something so generic.

8 Q. Why is it that you don't like to define
9 something with the word that it is?

10 MR. LINKE: Objection as to form.

11 THE WITNESS: That's a nice question. I think
12 it's important to distinguish what I meant by that. I
13 wouldn't, you know, it's -- it's important to clarify,
14 you know, the English lexicon and to use terms that
15 would most adequately help define something. And so I
16 was just trying to be helpful to your response.

17 BY MR. POLAK:

18 Q. Yeah, but why is it a problem to define a word
19 with the word?

20 MR. LINKE: Objection as to form.

21 THE WITNESS: I don't believe that it is a
22 problem.

23 BY MR. POLAK:

24 Q. You just said that it was. Are you changing
25 your testimony?

1 A. No.

2 MR. LINKE: Objection as to form.

3 BY MR. POLAK:

4 Q. Which is it, is it a problem or is it not a
5 problem to define a word with a word? Actually, I think
6 what you just said is that you do not like to define a
7 word with the word, I think that was your testimony. So
8 why is it that you don't like to define a word with the
9 word?

10 A. I'd be happy to answer that for you. The
11 English lexicon is filled with ample opportunities to be
12 descriptive and categorize things as needed. And so in
13 that example, I was trying to be as descriptive as
14 possible and it's -- it's as simple as that.

15 It was -- in order to help provide you a
16 cleaner response to your question. Also, I did just do
17 it, so it is an acceptable way of communicating.

18 Q. Do you agree with me it would be confusing
19 sometimes to define a word with a word, in terms of
20 trying to figure out what the word actually means?

21 MR. LINKE: Objection as to form. Objection as
22 being beyond the scope of the Rule 30(b)(6) deposition
23 topic.

24 MR. POLAK: He brought it up, Derek.

25 MR. LINKE: Well, I'm not instructing him not

1 to answer. I'm making my objection for the record as
2 concisely as possible. If you would like me to justify
3 it now, I can. Otherwise, you can keep going.

4 BY MR. POLAK:

5 Q. Mr. Moradian, you can answer the question.

6 A. Can you please repeat the question?

7 MR. POLAK: Ms. Langgle, could you repeat the
8 question? Read it for him?

9 THE COURT REPORTER: Yes.

10 (The last question was read back.)

11 MR. LINKE: Objection as to form. Objection as
12 being outside the scope of the Rule 30(b)(6) deposition
13 topics.

14 THE WITNESS: No, I don't. I think it's
15 beautiful. I think it's part of the English lexicon.
16 And I think when a word is self-descriptive in and of
17 itself, it provides ample context and that's what's so
18 beautiful about it.

19 BY MR. POLAK:

20 Q. Have you made any online statements about PTK
21 on any Wikipedia page we haven't discussed?

22 A. Well, I know we didn't discuss them on
23 inclusive excellence because they don't believe that
24 inclusive excellence is valid, even though the most
25 colleges and universities propound that and push it. So

1 I don't believe that, you know, PTK would have a place
2 in the inclusive excellence page.

3 I know that we didn't talk about them on the
4 Honor Society caucus page because they were never
5 members of the Honors Society caucus. To my knowledge,
6 I have never discussed them on the ACHS page because
7 while they were members for about 18 months out of 100
8 plus year history, I know it was a tumultuous era that
9 ultimately led to antitrust concerns, coming from the
10 ACHS about the behaviors of Phi Theta Kappa, where they
11 had to consult antitrust attorneys. And in regard to
12 the way PTK was behaving, I believe that was in 2000 --
13 2007, so I wouldn't write about that.

14 Let's see, the Ku Klux Klan Honor Society, I
15 don't believe there would be any reason to tie the two
16 together. It would -- wouldn't affect the scope of
17 objectivity, neutrality, verifiability, so I don't
18 believe so.

19 So I think, you know, if PTK were to be written
20 in other pages, it would most appropriately be placed in
21 a counterfeiting article or confusing brand perceptions
22 article perhaps, but I have not been involved in any of
23 those articles.

24 So to my knowledge, the only place that the Phi
25 Theta Kappa page has been referenced would be neatly

1 contained within your advertorial section that was
2 existed and now updated to meet Wikipedia standards to
3 achieve objectivity, neutrality and verifiability and
4 reliability, and that would be the only goal.

5 MR. POLAK: Objection as nonresponsive with the
6 exception of the last sentence there about where you
7 actually did make reference to PTK, which was what my
8 question was about. Not about all of the places where
9 you could have, but didn't.

10 BY MR. POLAK:

11 Q. Have you -- have you made any online statements
12 about PTK in the last 30 days, other than Wikipedia
13 pages?

14 MR. LINKE: Objection as to form. And
15 objection as being outside the scope of the
16 Rule 30(b)(6) deposition topics.

17 THE WITNESS: I'm thinking because I haven't
18 prepared for this because it is not within the scope of
19 the three things that I was asked to prepare for, but
20 I -- I will do my best to answer the question, so please
21 allow me a moment to think and make sure that I can give
22 you the best answer.

23 To the best of my knowledge, the last 30 days
24 have entailed me taking down articles, Twitter pages and
25 I'm -- I'm not aware of a single instance at this moment

1 of anything being added, other than a disclaimer, which
2 I was asked to add.

3 BY MR. POLAK:

4 Q. When did you create the inclusive excellence
5 Wikipedia page?

6 MR. LINKE: Objection as to form. And
7 objection as being beyond the scope of the Rule 30(b)(6)
8 deposition topics.

9 THE WITNESS: I haven't prepared for that, but
10 I can try to give you my best answer.

11 BY MR. POLAK:

12 Q. Please do.

13 A. To my knowledge, it would have been some time
14 between April 16, 2024, and August 22, 2024. It's
15 easily verifiable as it's a public record on Wikipedia.

16 Q. Are you aware of how often Wikipedia is
17 visited?

18 MR. LINKE: Objection as to form. Objection as
19 being outside the scope for the Rule 30(b)(6) deposition
20 topics.

21 THE WITNESS: Aware can mean a lot of things,
22 so...

23 BY MR. POLAK:

24 Q. Do you know?

25 MR. LINKE: Objection as to form. Objection as

1 to being outside the scope of the Rule 30(b)(6)
2 deposition topics.

3 THE WITNESS: Can you ask the question again,
4 please?

5 BY MR. POLAK:

6 Q. Isn't it the number one website in the world in
7 terms of visits?

8 MR. LINKE: Objection as to form. And
9 objection as being outside the scope of the
10 Rule 30(b)(6) deposition topics.

11 THE WITNESS: To my knowledge, Google is the
12 number one.

13 BY MR. POLAK:

14 Q. Where do you think Wikipedia ranks in terms of
15 the number of website hits or web traffic?

16 MR. LINKE: Objection as to form. Objection as
17 being outside the scope of the Rule 30(b)(6) deposition
18 topics.

19 THE WITNESS: I can't -- I didn't prepare for
20 that in conjunction with this testimony about the
21 30(b)(6) and the three categories, so it would only be a
22 guess. I don't feel comfortable guessing.

23 BY MR. POLAK:

24 Q. Do you have any understanding as to who the
25 typical users are of Wikipedia in terms of demographics?

1 MR. LINKE: Objection as to of form. And
2 objection as being outside the scope of the noticed
3 Rule 30(b)(6) deposition topics.

4 THE WITNESS: I have some idea.

5 BY MR. POLAK:

6 Q. What is it?

7 A. Well, based on Wikipedia's entry, which I read
8 last night, the users are generally hobbyists who are
9 engaged in the sector, professionals, men in their 20s
10 and in their retirement ages are disproportionately --

11 THE COURT REPORTER: I'm sorry, are what?

12 THE WITNESS: Disproportionately represented in
13 the Wikipedia population. And so that's my
14 understanding based on Wikipedia's own, you know,
15 reading what Wikipedia said.

16 BY MR. POLAK:

17 Q. Do you have any information on -- to what
18 extent students review Wikipedia pages?

19 MR. LINKE: Objection as to form. Objection as
20 being outside the scope of the Notice Rule 30(b)(6)
21 deposition topics.

22 THE WITNESS: I don't believe I do.

23 BY MR. POLAK:

24 Q. Have you contacted any media or news
25 organizations about PTK or Dr. Tincher-Ladner in the

1 last 60 days?

2 MR. LINKE: Objection as to form. And
3 objection as being outside the Rule 30(b)(6) deposition
4 topics.

5 Mr. Polak, this is so far beyond being strictly
6 limited to the Rule 30(b)(6) deposition topics. If you
7 have questions about that, he's here, he's been here.
8 You can ask those of the questions of the Wikipedia
9 page.

10 MR. POLAK: It goes to malice. You can
11 answer --

12 MR. LINKE: That's not within the scope -- it's
13 not within the scope of the deposition notice. It's not
14 within the scope of what the Court asked for as far as
15 discovery.

16 BY MR. POLAK:

17 Q. You can answer the question, Mr. Moradian.

18 A. Can you please repeat the question?

19 Q. Have you been in contact or in communication
20 with any news or media organizations about PTK or
21 Dr. Tincher-Ladner in the last 60 to 90 days?

22 MR. LINKE: Objection as to form. Objection as
23 being outside the scope of the Rule 30(b)(6) deposition
24 topics. I instruct the witness not to answer the
25 question, except to the extent it relates to the

1 Wikipedia pages, which is the subject of this deposition
2 and the subject of the discovery that Judge Reeves
3 indicated Honor Society needed to subject itself to,
4 which it has been doing all day.

5 BY MR. POLAK:

6 Q. Are you going to refuse to answer my question,
7 Mr. Moradian? I've already told you it goes to malice.

8 A. I'm going to follow the advice of my counsel.

9 Q. So you're going to refuse to answer my
10 question?

11 MR. LINKE: Objection as to form.

12 BY MR. POLAK:

13 Q. It's just a yes-or-no question. Have you been
14 in contact with any news or media organizations about
15 PTK or Dr. Tincher-Ladner in the last 60 to 90 days?

16 MR. LINKE: Same objections as to form.
17 Outside the scope of the Rule 30(b)(6) deposition
18 notice.

19 Same instruction. If it relates to the
20 Wikipedia page that is the subject of the discovery at
21 issue, to which this deposition was required to be
22 strictly limited, or to the deposition topics in the
23 notice, then he should answer. Otherwise, I'm
24 instructing him not to answer.

25

1 BY MR. POLAK:

2 Q. What's the answer, Mr. Moradian?

3 A. The answer is that I will follow the advice of
4 my counsel.

5 Q. So you are refusing to answer my question?

6 MR. LINKE: Objection as to form.

7 THE WITNESS: Yes, I am following the advice of
8 my counsel.

9 BY MR. POLAK:

10 Q. Are you a petulant cyber bully?

11 MR. LINKE: Objection as to form. Objection
12 based on the scope of the 30(b)(6) rule -- Rule 30(b)(6)
13 deposition notices, which this question is clearly
14 outside of.

15 THE WITNESS: There is no basis for that claim
16 and the argument would most be cleanly the opposite.

17 BY MR. POLAK:

18 Q. So there is no basis -- you're saying there is
19 no basis for when Judge Reeves called you a petulant
20 cyber bully?

21 MR. LINKE: Objection as to form. Objection as
22 to being beyond the scope the Rule 30(b)(6) deposition
23 notice.

24 THE WITNESS: I'm prepared to answer questions
25 and to testify on behalf of the three questions that

1 you're here to ask me, and I am prepared to answer
2 those. And I'm doing the best I can.

3 BY MR. POLAK:

4 Q. Can you answer my question then, please?

5 A. Can you please restate your question?

6 MR. POLAK: Ms. Langgle, could you please
7 reread the question for the witness?

8 THE COURT REPORTER: Yes.

9 (The last question was read back.)

10 MR. LINKE: Objection as to form. Objection as
11 being outside the scope of the Rule 30(b)(6) deposition
12 notice.

13 THE WITNESS: I will be happy to answer that if
14 I had a direct quote and context to that statement.

15 BY MR. POLAK:

16 Q. I'm going to show you the very last page of his
17 order. Mike Tyson -- I'm going to quote. Mike Tyson
18 once said everyone has a plan until they get punched in
19 the mouth, and he gives a citation. He goes on to say,
20 quote, it appears that Honor Society wants to punch PTK
21 in the mouth at every opportunity, but the totality of
22 its online behavior paints a picture of a petulant cyber
23 bully fixated on destroying a competitor rather than a
24 boxer abiding by the rules of his sport.

25 So is it your view, Mr. Moradian, that

1 Judge Reeves got it wrong when he called you a petulant
2 cyber bully?

3 MR. LINKE: Objection as to form. And
4 objection as being beyond the scope the Rule 30(b)(6)
5 deposition topics.

6 THE WITNESS: I have no context to answer that
7 question.

8 BY MR. POLAK:

9 Q. What do you mean by that? You have a whole
10 27-page order here, where he walked through in
11 painstaking detail, including the Wikipedia pages, where
12 he came to the conclusion that you were a petulant cyber
13 bully. You said you read the order, right? Isn't that
14 right?

15 MR. LINKE: Objection as to form.

16 BY MR. POLAK:

17 Q. You told me before that you had read the order
18 and in fact had read it many times, right?

19 MR. LINKE: Objection as to form. Objection as
20 being outside the scope of the Rule 30(b)(6) deposition
21 topics.

22 THE WITNESS: Yes, I have read this statement,
23 this document many times.

24 BY MR. POLAK:

25 Q. Okay. So are you disagreeing with

1 Judge Reeves' characterization of your online behavior
2 as painting a picture of a petulant cyber bully?

3 MR. LINKE: Objection as to form. Objection as
4 being outside the scope of the Rule 30(b)(6) deposition
5 topics.

6 THE WITNESS: I didn't prepare for this
7 question because it's outside of the three things that I
8 was asked to prepare for in order to answer this.

9 BY MR. POLAK:

10 Q. You still need to answer it, Mr. Moradian.

11 A. You cut me off.

12 Q. Hopefully you're getting to the answer.

13 Go ahead.

14 A. So I believe that the people who know me, the
15 people who have dealt with me and anybody that you talk
16 to who knows me, knows who I am, what I stand for and
17 what I believe in. I -- and so based on that, I -- and
18 to your original question, I don't consider myself to be
19 that.

20 And I -- I believe that I have been a force for
21 good, that I've been recognized on Wikipedia for being a
22 valid and contributor. I've been recognized by Business
23 Magazine, Business Week Magazine for being one of
24 America's best young entrepreneurs. I was recognized by
25 the US Department of State for my entrepreneurial

1 efforts that was published in a publication around the
2 world.

3 And so I believe my record speaks for itself
4 that I have values, I believe in inclusivity and
5 furthering opportunities for everybody and for being
6 there for the people who need me the most. And so I'm
7 proud to hang my hat, knowing that that's who I am and
8 what I stand for.

9 Q. If you have such a great reputation and take
10 such pride in it, why are you putting it all at risk by
11 cyber bullying PTK in the way that you have, including
12 these Wikipedia edits?

13 MR. LINKE: Objection as to form.

14 THE WITNESS: Well, the statement that you
15 made, as you and I both know, is a gross
16 mischaracterization. And I have been open to
17 conversation for two-and-a-half years. I have been
18 reaching out and asking to have a conversation. And I
19 believe that open doors and communications is the best
20 way. It's -- the world operates through understanding,
21 through sharing mutual commonalities and through
22 discussion.

23 And so I have made myself available to call me
24 at any time. Dr. Tincher-Ladner has my phone number, as
25 I've seen her having my business card. You have my

1 phone number. I'll make it easier and give the whole
2 public my phone number, it is [REDACTED] And
3 anybody can call me at any time and I'm willing to talk
4 about this in order to open doors. And so I -- I have
5 done exactly the opposite.

6 And to the extent that I wouldn't say I'm
7 risking it all. You know, the first statement of our
8 press release, which you mischaracterized as well, says
9 in defense of students and the society -- general honor
10 society -- community College space. The first word, the
11 first substantive word was defense. And I'm here
12 defending what I believe in, defending the families and
13 the employees who have sacrificed to create an inclusive
14 honor society for the thousands of students who are
15 loyal members and who enjoy our benefits and tools.

16 And for the fact of the brand that we have
17 built over the last decade, I am -- but nevertheless I
18 am here to speak and, you know, talking about this case
19 is -- I would prefer to not be in this case. And, you
20 know, this -- this is not the preferred route because
21 the only winner here, sir, is you. You're making
22 millions of dollars off of the back of a nonprofit. And
23 this nonprofit is seeking information through you.

24 I would surmise that it would be best for them
25 to take third party consultations, including their own

1 lawyer, Maury Nunez, to get his opinion on what he
2 believes is the best. Because you, sir, are giving, you
3 know, as established in the heckler case that you were
4 involved in, misrepresentations to your -- to your --
5 your own party and they're detrimentally relying on it.

6 So I am trying my best here to open the doors
7 to Dr. Lynn Tincher-Ladner to help her and to help all
8 of us move forward and focus on creating value for
9 students on spending our money, helping the individuals
10 we are aimed to help and not enriching Jonathan Polak.

11 MR. POLAK: Objection. Nonresponsive.

12 MR. LINKE: Brandon, are we at seven hours now?
13 I believe we're a minute over.

14 VIDEOGRAPHER: Yes, about 7:01, it's 7 hours
15 and 1 minute.

16 MR. POLAK: I've probably got about another
17 five minutes or so. I think he has taken up plenty of
18 my time.

19 VIDEOGRAPHER: Mr. Moradian, this is on the
20 record, just to let you know.

21 MR. POLAK: You can come back, Michael.

22 Okay.

23 MR. LINKE: So Mr. Polak, you're saying with
24 five more minutes, you'll be finished with the
25 examination?

1 MR. POLAK: Well, five minutes of my questions.
2 Whether I get five minutes of answers or not is a whole
3 other thing. But look, I mean, the -- again, I've never
4 been in a deposition of this nature before. And
5 Mr. Asari, I thought, was at the far end of deposition
6 misconduct, but we've reached new lows today.

7 I mean, look, I've got more questions and I
8 think I'm entitled to continue asking them. If you want
9 to call it, call it, and I'll take it up with
10 Judge Meyers.

11 MR. LINKE: Well, I tell you what, there's been
12 so much questioning today that was clearly outside the
13 scope of the Rule 30(b)(6). We let you do it. And if
14 you are willing to say your deposition will be concluded
15 with five more minutes of testimony, we'll do it.
16 Otherwise, I don't see that being productive for the
17 parties and we should end it now.

18 MR. POLAK: Well, I'm going to keep going until
19 you tell me I'm going to stop.

20 MR. LINKE: Okay. So then we should probably
21 stop for the night and that's the end of the deposition.

22 MR. POLAK: Okay. Well, I've got more
23 questions and he did impede my ability to get this
24 deposition done. There's no reason this should have
25 taken seven hours of testimony or more. There is no

1 reason.

2 I'm fully prepared to go send not only
3 Judge Meyers the transcript, but the video because the
4 video is pretty telling.

5 MR. LINKE: I agree. And I think the
6 questioning was the primary cause of that.

7 MR. POLAK: Okay.

8 MR. LINKE: And I share your view on what the
9 transcript and the video will demonstrate. So my offer
10 was five minutes, if you can use it to conclude, so that
11 we can put this behind ourselves. Otherwise, I don't
12 see any reason to continue and we believe this
13 deposition is completed other than that.

14 MR. POLAK: I would like to think that I can
15 get this done in the next five minutes. But again, I
16 can't promise you that will be the case when
17 Mr. Moradian seems to think running out the clock is a
18 reasonable way to do it. I'm prepared to keep asking
19 some questions. And then if you think it's gone too
20 long after that, you just let me know and we'll stop.

21 MR. LINKE: Can we take a three minute sidebar
22 off the record, so I can consult with my client?

23 MR. POLAK: Yes.

24 VIDEOGRAPHER: Okay, this marks the end of
25 Media No. 7. Going off the record at 7:49 p.m. Pacific.

1 (Off the record at 7:49 p.m.)

2 (Back on the record at 8:00 p.m.)

3 VIDEOGRAPHER: Okay. We're back on the record
4 at 8:00 p.m. Pacific, and this marks the beginning of
5 Media No. 8, deposition of Michael Moradian.

6 Please proceed, Counsel.

7 MR. POLAK: All right, sorry. Thank you.

8 We had a chance to go off the record and talk
9 about where we are. I think where we are right now is
10 that I went back and looked at my notes, I've got more
11 than just a limited amount of questions for
12 Mr. Moradian.

13 And I think Derek and I have a disagreement
14 over whether or not more time is necessary. I'm not
15 going to rehash the reasons why I think it is and Derek,
16 I'd ask you not to rehash the reasons why you think we
17 should finish. But suffice to say, you think we should
18 be done, I disagree. We'll take it up at a later date.

19 And as far as I'm concerned we'll keep the
20 deposition subject to being resumed at a later point.
21 And Derek, I think you look at it differently.

22 MR. LINKE: Yes, and I appreciate your
23 invitation that we not rehash the positions that we
24 previously stated. I only note that we object to not
25 concluding the deposition. And you said that we think

1 it should be done. I would just like to clarify that
2 our position is that it is done, but with that, we can
3 end.

4 MR. POLAK: If that's what I said, that's not
5 what I intended. So you're correct, we are in
6 disagreement about that.

7 I guess with that, we'll go ahead and end the
8 deposition.

9 VIDEOGRAPHER: Okay. Thank you. Standby,
10 please.

11 Is there anything from the court reporter
12 before I conclude the record only, or counsel?

13 THE COURT REPORTER: Mr. Linke, did you want a
14 copy of the transcript?

15 MR. LINKE: Yes, and I would like to place it
16 on the same delivery schedule as Mr. Polak's client
17 does.

18 MR. POLAK: And we will need a copy of the
19 transcript, and we will need it fairly quickly. And I
20 think we'll also need a copy of the video.

21 THE COURT REPORTER: Thank you.

22 VIDEOGRAPHER: Thank you. I'm going to
23 conclude for today.

24 This ends today's deposition of Michael
25 Moradian. Total number of media used is 8. Going off

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1 the record at 8:02 p.m. Pacific Daylight Time.

2 (Off the record at 8:02 p.m.)

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CERTIFICATE

I, Katie Langgle, a California Certified
Shorthand Reporter, do hereby certify:

That prior to being examined, the witness in
the foregoing proceedings was by me duly sworn to
testify to the truth, the whole truth, and nothing but
the truth;

That said proceedings were taken before me at
the time and place therein set forth and were taken down
by me in shorthand and thereafter transcribed into
typewriting under my direction and supervision;

I further certify that I am neither counsel
for, nor related to, any party to said proceedings, nor
in any way interested in the outcome thereof.

In witness whereof, I have hereunto subscribed
my name at Laughlin, Nevada, this 3rd day of October,
2024.

A handwritten signature in blue ink that reads "Katie L. Langgle". The signature is written in a cursive style and is positioned above a horizontal line.

Katie L. Langgle

CSR No. 8637

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Veritext Legal Solutions
1100 Superior Ave
Suite 1820
Cleveland, Ohio 44114
Phone: 216-523-1313

October 7, 2024

To: Mr. Linke

Case Name: Phi Theta Kappa Honor Society v. Honorsociety.Org Inc Et Al

Veritext Reference Number: 6946296

Witness: Michael Moradian Deposition Date: 10/1/2024

Dear Sir/Madam:

Enclosed please find a deposition transcript. Please have the witness review the transcript and note any changes or corrections on the included errata sheet, indicating the page, line number, change, and the reason for the change. Have the witness' signature notarized and forward the completed page(s) back to us at the Production address shown above, or email to production-midwest@veritext.com.

If the errata is not returned within thirty days of your receipt of this letter, the reading and signing will be deemed waived.

Sincerely,
Production Department

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DEPOSITION REVIEW
CERTIFICATION OF WITNESS

ASSIGNMENT REFERENCE NO: 6946296

CASE NAME: Phi Theta Kappa Honor Society v. Honorsociety.Org
Inc Et Al

DATE OF DEPOSITION: 10/1/2024

WITNESS' NAME: Michael Moradian

In accordance with the Rules of Civil
Procedure, I have read the entire transcript of
my testimony or it has been read to me.

I have made no changes to the testimony
as transcribed by the court reporter.

Date Michael Moradian

Sworn to and subscribed before me, a
Notary Public in and for the State and County,
the referenced witness did personally appear
and acknowledge that:

They have read the transcript;

They signed the foregoing Sworn
Statement; and

Their execution of this Statement is of
their free act and deed.

I have affixed my name and official seal

this _____ day of _____, 20____.

Notary Public

Commission Expiration Date

DEPOSITION REVIEW
CERTIFICATION OF WITNESS

ASSIGNMENT REFERENCE NO: 6946296

CASE NAME: Phi Theta Kappa Honor Society v. Honorsociety.Org
Inc Et Al

DATE OF DEPOSITION: 10/1/2024

WITNESS' NAME: Michael Moradian

In accordance with the Rules of Civil
Procedure, I have read the entire transcript of
my testimony or it has been read to me.

I have listed my changes on the attached
Errata Sheet, listing page and line numbers as
well as the reason(s) for the change(s).

I request that these changes be entered
as part of the record of my testimony.

I have executed the Errata Sheet, as well
as this Certificate, and request and authorize
that both be appended to the transcript of my
testimony and be incorporated therein.

Date

Michael Moradian

Sworn to and subscribed before me, a
Notary Public in and for the State and County,
the referenced witness did personally appear
and acknowledge that:

They have read the transcript;

They have listed all of their corrections
in the appended Errata Sheet;

They signed the foregoing Sworn
Statement; and

Their execution of this Statement is of
their free act and deed.

I have affixed my name and official seal
this _____ day of _____, 20____.

Notary Public

Commission Expiration Date

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ERRATA SHEET
VERITEXT LEGAL SOLUTIONS MIDWEST
ASSIGNMENT NO: 6946296

PAGE/LINE(S) / CHANGE /REASON

Date Michael Moradian
SUBSCRIBED AND SWORN TO BEFORE ME THIS _____
DAY OF _____, 20_____.

Notary Public

Commission Expiration Date

[& - 22]

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[60th - acknowledge]

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[acknowledge - advocate]

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Mississippi Rules of Civil Procedure

Rule 30

Depositions Upon Oral Examination

(e) Submission to Witness; Changes; Signing.

When the testimony is taken by stenographic means, or is recorded by other than stenographic means as provided in subsection (b)(4) of this rule, and if the transcription or recording thereof is to be used at any proceeding in the action, such transcription or recording shall be submitted to the witness for examination, unless such examination is waived by the witness and by the parties. Any changes in form or substance which the witness desires to make shall be entered upon the transcription or stated in a writing to accompany the recording, together with a statement of the reasons given by the witness for making them. Notice of such changes and reasons shall promptly be served upon all parties by the party taking the deposition. The transcription or recording shall then be affirmed in writing as correct by the witness, unless the parties by stipulation waive the affirmation. If the transcription or recording is not affirmed as correct by the witness within

thirty days of its submission to him, the reasons for the refusal shall be stated under penalty of perjury on the transcription or in a writing to accompany the recording by the party desiring to use such transcription or recording. The transcription or recording may then be used fully as though affirmed in writing by the witness, unless on a motion to suppress under Rule 32(d)(4) the court holds that the reasons given for the refusal to affirm require rejection of the deposition in whole or in part.

DISCLAIMER: THE FOREGOING CIVIL PROCEDURE RULES ARE PROVIDED FOR INFORMATIONAL PURPOSES ONLY. THE ABOVE RULES ARE CURRENT AS OF APRIL 1, 2019. PLEASE REFER TO THE APPLICABLE STATE RULES OF CIVIL PROCEDURE FOR UP-TO-DATE INFORMATION.

VERITEXT LEGAL SOLUTIONS

COMPANY CERTIFICATE AND DISCLOSURE STATEMENT

Veritext Legal Solutions represents that the foregoing transcript is a true, correct and complete transcript of the colloquies, questions and answers as submitted by the court reporter. Veritext Legal Solutions further represents that the attached exhibits, if any, are true, correct and complete documents as submitted by the court reporter and/or attorneys in relation to this deposition and that the documents were processed in accordance with our litigation support and production standards.

Veritext Legal Solutions is committed to maintaining the confidentiality of client and witness information, in accordance with the regulations promulgated under the Health Insurance Portability and Accountability Act (HIPAA), as amended with respect to protected health information and the Gramm-Leach-Bliley Act, as amended, with respect to Personally Identifiable Information (PII). Physical transcripts and exhibits are managed under strict facility and personnel access controls. Electronic files of documents are stored in encrypted form and are transmitted in an encrypted

fashion to authenticated parties who are permitted to access the material. Our data is hosted in a Tier 4 SSAE 16 certified facility.

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EXHIBIT A-12

MUTUAL RECIPROCAL TRADEMARKS LICENSING AGREEMENT

THIS AGREEMENT is made by and between THE PHI BETA KAPPA SOCIETY (hereinafter, "Beta") and PHI THETA KAPPA (hereinafter, "Theta") each of Beta and Theta being a "Party" and together the "Parties" to this Agreement as follows:

WHEREAS, Beta is a not-for-profit association, established in 1776, which, as an honor society, promotes liberal scholarship in four year undergraduate colleges and universities throughout the United States; and

WHEREAS, Theta is a not-for-profit corporation, established in 1918, which, as an honor society, promotes scholarship in two year junior colleges throughout the United States; and

WHEREAS, Beta is the owner of its registered trademarks which include its name in various forms, as detailed hereinbelow; and

WHEREAS, Theta is the owner of its own separate registered trademarks which include its name in various forms, as detailed hereinbelow; and

WHEREAS, Beta and Theta have had an oral understanding and cooperative arrangement between them as to their identities; and

WHEREAS, Beta and Theta each and both wish to now memorialize that said understanding and cooperative arrangement;

NOW, THEREFORE, they do agree:

1. **TRADEMARKS:** The Trademarks which are the subject of this Agreement are the following:

1.01 Owned by Beta:

<u>Mark</u>	<u>Registr. #</u>
ΦBK (as to Greek letters only; not remainder of Mark)	591,140
ΦBK (as to Greek letters only; not remainder of Mark)	731,963
Phi Beta Kappa	734,333

1.02 Owned by Theta:

<u>Mark</u>	<u>Registr. #</u>
ΦΘK	1,837,832
Phi Theta Kappa	1,844,370

1.03 The Parties agree and acknowledge that the foregoing Trademarks are not all of the Trademarks owned by each.

2. **ACKNOWLEDGEMENTS:** Each Party has acknowledged and hereby again acknowledges that:

2.01 The Parties have similar (but not identical) eleemosynary goals and purposes which do not conflict in promoting scholarship and education.

2.02 The names of the Parties bear a certain similarity in appearance and sound, whether in the form of Greek letters or when spelled in their respective phonetic English equivalents.

---MUTUAL RECIPROCAL TRADEMARKS LICENSING AGREEMENT

2.03 The appearance and sound of each of the respective trademarks of the Parties constitute essential elements of the registered marks.

2.04 The Parties serve distinctly separate segments of the educational community.

2.05 Each Party's name is a "Famous Mark" within the meaning of 15 U.S.C. §1125(c).

2.06 Beta's said trademarks are owned exclusively by Beta as are all of Beta's trademarks.

2.07 Theta's said trademarks are owned exclusively by Theta as are all of Theta's trademarks.

3. *LIMITED RECIPROCAL LICENSES:* The Parties hereby agree to the following licenses to be in effect for the term of this Agreement and to be effective retroactively to

3.01 Beta hereby grants unto Theta the limited power and authority for the term of this Agreement (including all extensions and renewals) to utilize Beta's name and aforesaid trademarks, which necessarily include but not are not specifically limited to the appearance and sound of said marks, only to the limited and minimal extent that the same may be found to be subsumed in Theta's name, and for no other purpose without the written agreement of Beta.

3.02 Theta hereby grants unto Beta the limited power and authority for the term of this Agreement (including all extensions and renewals) to utilize Theta's name and aforesaid trademarks, which necessarily include but not are not specifically limited to the appearance and sound of said marks, only to the limited and minimal extent that the same may be found to be subsumed in Beta's name, and for no other purpose without the written agreement of Theta.

3.03 Nothing herein shall be construed to grant to Theta the right to use Beta's name in any way other than as subsumed in Theta's use of Theta's own name.

3.04 Nothing herein shall be construed to grant to Beta the right to use Theta's name in any way other than as subsumed in Beta's use of Beta's own name.

3.05 Each of said licenses is applicable to and exercisable in all media and forms of human apprehension, and is not geographically limited in any way.

3.06 Neither license granted hereunder is exclusive.

3.07 Neither Party has the right to sublicense or assign any right or license granted in this Agreement without the prior written consent of the Party granting such license, but the same shall not be construed to prevent any use or license by Beta of Beta's own name and trademarks, or prevent any use or license by Theta of Theta's own name and trademarks.

3.08 As neither Party is hereby authorized to utilize the other's trademarks apart from subsumption as aforesaid, no credit to or acknowledgement of the Party granting the license is to be given or made at any time in any way, unless agreed otherwise in writing by the such granting Party.

4. *CONSIDERATION:* The Parties agree that the mutual promises herein contained and the reciprocal licenses herein granted are adequate and fair consideration had and received by each.

5. *TERM:* This Agreement and the licenses granted hereunder shall continue in full force and effect until terminated in accord with provisions of this Agreement.

---MUTUAL RECIPROCAL TRADEMARKS LICENSING AGREEMENT

6. **TERMINATION:** Each Party has the right to terminate this Agreement on thirty (30) days written notice at any time.

7. **WARRANTIES:** No other warranties are hereby made except that:

7.01 Beta warrants that Beta's said trademarks are owned exclusively by Beta as are all of Beta's trademarks.

2.06 Theta warrants that Theta's said trademarks are owned exclusively by Theta as are all of Theta's trademarks.

8. **INFRINGEMENT NOTIFICATION:** If a licensed Party shall learn of or discover any actual, apparent, intentional or suspected infringement of a trademark of the licensing Party, the licensed Party shall have the duty to promptly notify the licensing Party thereof. Each Party shall otherwise be wholly and solely responsible for the policing of its own trademarks and the enforcement of its own rights.

9. **BREACH:** Each Party shall indemnify and save harmless the other Party in and from all costs, damages, detriments, losses and expenses for any breach of this Agreement by such breaching Party, whether intentional or unintentional.

9.01 No enforcement action shall be taken against a Party until at least five (5) business days written notice of breach has been provided to the Party against whom such action is contemplated.

9.02 In addition to all other rights and remedies allowed by and under law, each Party shall have the right to enjoin the other from any actual or threatened breach, without the same constituting an election of remedies.

9.03 All costs of enforcement or defense, including but not limited to reasonable attorney fees shall be recoverable by the prevailing party in any enforcement action.

10. **RELATIONSHIP:** The relationship between the Parties is that of independently contracting entities.

10.1 No joint venture, partnership, agency or other relationship is formed hereby or to be construed hereunder.

10.2 Neither Party has any right or authority to act on behalf or hold itself out as agent for or as a part of the other Party.

11. **COUNSEL:** The Parties each acknowledge that this Agreement has been drafted by one Counsel at the mutual request of both Parties.

11.1 Each Party acknowledges having entered into written waiver of conflicts of interest of such single Counsel with regard to this Agreement, after explanation and discussion of the same with such Counsel.

11.2 Each Party acknowledges that Counsel disclosed the right of each party to employ separate Counsel in connection herewith.

12. **MISCELLANEOUS:** The following Miscellaneous provisions apply:

---MUTUAL RECIPROCAL TRADEMARKS LICENSING AGREEMENT

12.1 This Agreement is the entire agreement between the Parties as to the subject matter hereof, superseding and replacing all other prior agreements and contracts of every kind and character between the Parties, all of which are merged herein, and may not be modified except in writing signed by all Parties.

12.2 If any portion hereof is declared invalid by rule of court or operation of law, the same shall not invalidate the entire Agreement which shall continue in effect as if the invalid portion had not been a part hereof.

12.3 This Agreement is and shall be binding upon and inure to the benefit of each and every successor-in-interest of every kind and character of each of the respective Parties.

12.4 This Agreement is not assignable by any Party without the written consent of all Parties, and no sublicensing, relicensing, transfer or alienation hereof is permitted or allowed.

12.5 Each Party shall provide such further assurances, sign such additional documents and take such additional actions as may be reasonable and necessary to effectuate and fulfill all the terms of this instrument.

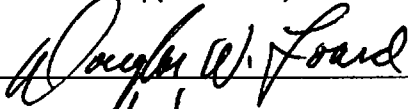
12.6 This Agreement is and shall be fully binding upon all the respective successors of every kind and character of each of the Parties.

12.7 This Contract is and shall be governed by and construed under the laws of the District of Columbia.

The Phi Beta Kappa Society

by: _____


Date: _____


8/21/00

Phi Theta Kappa

by: _____

Date: _____


10/2/00

PBK&PTK.doc

MORRIS A. NUNES, ATTY., P.C.

7247 LEE HIGHWAY
FALLS CHURCH, VIRGINIA 22046

(703) 241-4917
FAX: (703) 241-4935

MORRIS A. NUNES
ADM. VA. & D.C.

JOY ELIZABETH MATAK, ESQ.
ADM. VA.

Aug. 15, 2000

Dr. Douglas Foard
The Phi Beta Kappa Society
4th Floor
1785 Mass. Ave. NW
Washington, D.C. 20036

Re: PBK/PTK

Dear Doug:

Per our e-mails and conversations, here are three original hard copies for signature of the Waiver of Conflicts document. Please forward all three to Rod once you've signed all three.

By copy hereof, I'm asking Rod to then sign all three, keep one, return one to you and one to me.

I'm hoping we can have this out of the way quickly so we can move on to the substantive matter itself.

Please let me know if there is any question.

Many thanks to you and Rod for your understanding and cooperation.

Cordially,
Morris A. Nunes, Atty., P.C.



Morris A. Nunes, Esq.

cc: Rod Risley
Encl.
MAN/tsh

WAIVER OF CONFLICTS OF INTEREST

THIS WAIVER is made by and among The Phi Beta Kappa Society ("Beta") and Phi Theta Kappa ("Theta") (hereinafter, all together, "Client Parties") and Morris A. Nunes, Esq. ("MAN") an attorney in Fairfax County, Virginia, together with his Virginia professional corporation, Morris A. Nunes, Atty., P.C. ("MANAPC") (hereinafter, MAN and MANAPC together, "Lawyer Parties") all agreeing as follows:

1. BACKGROUND: A. Beta and Theta have both separately been clients of the Lawyer Parties, for a variety of matters stretching over several years.

B. The Client Parties desire to enter into a reciprocal agreement for the purpose of protecting their separate trademarks and names.

2. CONFLICT: Beta and Theta have jointly agreed the Lawyer Parties to draft the said proposed agreement, which representation does or could present a conflict of interest between the Client Parties, in that advantages to one of the Client Parties in the particular language of such agreement could be disadvantageous to another, or that matters on which advice is sought by one party may require advice which could potentially be disadvantageous to the other party.

3. WAIVER: A. After explanation and upon due consideration, *including but not limited to the opportunity to consult with other counsel and advisors*, the undersigned, among whom it is acknowledged that said conflicts of interest may exist or do exist or both, do each and all waive such conflicts as to MAN and as to MANAPC and all associates, employees, staff, officers and directors thereof, so that the same may represent Beta in drafting such an agreement, for which Beta and Theta will each pay one-half of the attorney fees to the Lawyer Parties.

B. It is further intended and understood among the Parties that such agreement is designed to memorialize the terms of a pre-existing oral agreement originally made by the Parties without the assistance of any counsel as Beta and Theta have negotiated. The Parties may further negotiate, and the representation by the Lawyer Parties is not intended to create any advantage or disadvantage for one or the other of Beta and Theta, even though both Beta and Theta acknowledge and understand that each could seek and continue to be free to seek other legal counsel to try to obtain representation for such purposes.

C. Nothing in this Waiver shall be construed to prevent any party from terminating representation in any matter in accord with any agreement of representation.

4. BINDING: This waiver is binding upon all of the heirs, successors and assigns, jointly and severally, of each and all of the parties hereto.

5. WAIVER EFFECTIVE: This Waiver shall not be effective until signed by all of the parties and shall then be effective on the date last signed. Further, signature hereon by any party in the absence of all signatures shall not be binding upon any party nor constitute an admission or evidence as to, for or against any party.

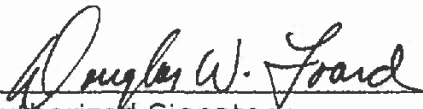
--- WAIVER OF CONFLICTS OF INTEREST

6. **LATER RECUSAL:** Notwithstanding anything herein to the contrary, the parties hereto all agree that if it shall appear that additional matters of conflict shall arise or that any existing matters may or appear to prevent the Lawyer Parties from fulfilling all ethical duties despite this Waiver, any of the client parties may request that Maury and MANAPC later recuse themselves from further involvement in such transaction or Maury and MANAPC may voluntarily recuse themselves.

Client Parties:

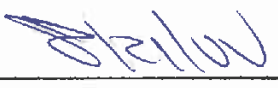
The Phi Beta Kappa Society

Phi Theta Kappa

by: 
Authorized Signatory


Authorized Signatory

Date: 8/16/00, 2000


Date: , 2000

Lawyer Parties:

MANAPC: Morris A. Nunes, Atty., P.C.

MAN:

by: 
Authorized Signatory


Morris A. Nunes

Date: Aug. 15, 2000

Date: Aug. 15, 2000

MUTUAL RECIPROCAL TRADEMARKS LICENSING AGREEMENT

THIS AGREEMENT is made by and between THE PHI BETA KAPPA SOCIETY (hereinafter, "Beta") and PHI THETA KAPPA (hereinafter, "Theta") each of Beta and Theta being a "Party" and together the "Parties" to this Agreement as follows:

WHEREAS, Beta is a not-for-profit association, established in 1776, which, as an honor society, promotes liberal scholarship in four year undergraduate colleges and universities throughout the United States; and

WHEREAS, Theta is a not-for-profit corporation, established in 1918, which, as an honor society, promotes scholarship in two year junior colleges throughout the United States; and

WHEREAS, Beta is the owner of its registered trademarks which include its name in various forms, as detailed hereinbelow; and

WHEREAS, Theta is the owner of its own separate registered trademarks which include its name in various forms, as detailed hereinbelow; and

WHEREAS, Beta and Theta have had an oral understanding and cooperative arrangement between them as to their identities; and

WHEREAS, Beta and Theta each and both wish to now memorialize that said understanding and cooperative arrangement;

NOW, THEREFORE, they do agree:

1. **TRADEMARKS:** The Trademarks which are the subject of this Agreement are the following:

1.01 Owned by Beta:

<u>Mark</u>	<u>Registr. #</u>
ΦBK (as to Greek letters only; not remainder of Mark)	591,140
ΦBK (as to Greek letters only; not remainder of Mark)	731,963
Phi Beta Kappa	734,333

1.02 Owned by Theta:

<u>Mark</u>	<u>Registr. #</u>
ΦΘK	1,837,832
Phi Theta Kappa	1,844,370

1.03 The Parties agree and acknowledge that the foregoing Trademarks are not all of the Trademarks owned by each.

2. **ACKNOWLEDGEMENTS:** Each Party has acknowledged and hereby again acknowledges that:

2.01 The Parties have similar (but not identical) eleemosynary goals and purposes which do not conflict in promoting scholarship and education.

2.02 The names of the Parties bear a certain similarity in appearance and sound, whether in the form of Greek letters or when spelled in their respective phonetic English equivalents.

---MUTUAL RECIPROCAL TRADEMARKS LICENSING AGREEMENT

2.03 The appearance and sound of each of the respective trademarks of the Parties constitute *essential* elements of the registered marks.

2.04 The Parties serve distinctly separate segments of the educational community.

2.05 Each Party's name is a "Famous Mark" within the meaning of 15 U.S.C. §1125(c).

2.06 Beta's said trademarks are owned exclusively by Beta as are all of Beta's trademarks.

2.07 Theta's said trademarks are owned exclusively by Theta as are all of Theta's trademarks.

3. *LIMITED RECIPROCAL LICENSES:* The Parties hereby agree to the following licenses to be in effect for the term of this Agreement and to be effective retroactively to

3.01 Beta hereby grants unto Theta the limited power and authority for the term of this Agreement (including all extensions and renewals) to utilize Beta's name and aforesaid trademarks, which necessarily include but not are not specifically limited to the appearance and sound of said marks, only to the limited and minimal extent that the same may be found to be subsumed in Theta's name, and for no other purpose without the written agreement of Beta.

3.02 Theta hereby grants unto Beta the limited power and authority for the term of this Agreement (including all extensions and renewals) to utilize Theta's name and aforesaid trademarks, which necessarily include but not are not specifically limited to the appearance and sound of said marks, only to the limited and minimal extent that the same may be found to be subsumed in Beta's name, and for no other purpose without the written agreement of Theta.

3.03 Nothing herein shall be construed to grant to Theta the right to use Beta's name in any way other than as subsumed in Theta's use of Theta's own name.

3.04 Nothing herein shall be construed to grant to Beta the right to use Theta's name in any way other than as subsumed in Beta's use of Beta's own name.

3.05 Each of said licenses is applicable to and exercisable in all media and forms of human apprehension, and is not geographically limited in any way.

3.06 Neither license granted hereunder is exclusive.

3.07 Neither Party has the right to sublicense or assign any right or license granted in this Agreement without the prior written consent of the Party granting such license, but the same shall not be construed to prevent any use or license by Beta of Beta's own name and trademarks, or prevent any use or license by Theta of Theta's own name and trademarks.

3.08 As neither Party is hereby authorized to utilize the other's trademarks apart from subsumption as aforesaid, no credit to or acknowledgement of the Party granting the license is to be given or made at any time in any way, unless agreed otherwise in writing by the such granting Party.

4. *CONSIDERATION:* The Parties agree that the mutual promises herein contained and the reciprocal licenses herein granted are adequate and fair consideration had and received by each.

5. *TERM:* This Agreement and the licenses granted hereunder shall continue in full force and effect until terminated in accord with provisions of this Agreement.

---MUTUAL RECIPROCAL TRADEMARKS LICENSING AGREEMENT

6. **TERMINATION:** Each Party has the right to terminate this Agreement on thirty (30) days written notice at any time.

7. **WARRANTIES:** No other warranties are hereby made except that:

7.01 Beta warrants that Beta's said trademarks are owned exclusively by Beta as are all of Beta's trademarks.

2.06 Theta warrants that Theta's said trademarks are owned exclusively by Theta as are all of Theta's trademarks.

8. **INFRINGEMENT NOTIFICATION:** If a licensed Party shall learn of or discover any actual, apparent, intentional or suspected infringement of a trademark of the licensing Party, the licensed Party shall have the duty to promptly notify the licensing Party thereof. Each Party shall otherwise be wholly and solely responsible for the policing of its own trademarks and the enforcement of its own rights.

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10. **RELATIONSHIP:** The relationship between the Parties is that of independently contracting entities.

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12. **MISCELLANEOUS:** The following Miscellaneous provisions apply:

---MUTUAL RECIPROCAL TRADEMARKS LICENSING AGREEMENT

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12.2 If any portion hereof is declared invalid by rule of court or operation of law, the same shall not invalidate the entire Agreement which shall continue in effect as if the invalid portion had not been a part hereof.

12.3 This Agreement is and shall be binding upon and inure to the benefit of each and every successor-in-interest of every kind and character of each of the respective Parties.

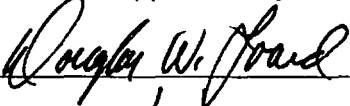
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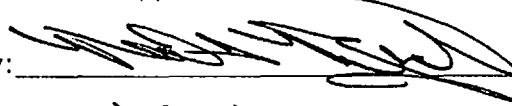
12.6 This Agreement is and shall be fully binding upon all the respective successors of every kind and character of each of the Parties.

12.7 This Contract is and shall be governed by and construed under the laws of the District of Columbia.

The Phi Beta Kappa Society

by: 
Date: 8/21/00

Phi Theta Kappa

by: 
Date: 10/3/00

PBK&PTK.doc

MORRIS A. NUNES, ATTY., P.C.

7247 LEE HIGHWAY
FALLS CHURCH, VIRGINIA 22046

(703) 241-4917
FAX: (703) 241-4935

COPY

MORRIS A. NUNES
ADM. VA & D.C.

JOY ELIZABETH MATAK, ESQ
ADM. VA.

AUG 18 2000

Aug. 15, 2000

Dr. Douglas Foard
The Phi Beta Kappa Society
4th Floor
1785 Mass. Ave. NW
Washington, D.C. 20036

Re: PBK/PTK

Dear Doug:

Per our e-mails and conversations, here are three original hard copies for signature of the Waiver of Conflicts document. Please forward all three to Rod once you've signed all three.

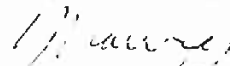
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I'm hoping we can have this out of the way quickly so we can move on to the substantive matter itself.

Please let me know if there is any question.

Many thanks to you and Rod for your understanding and cooperation.

Cordially,
Morris A. Nunes, Atty., P.C.


Morris A. Nunes, Esq.

cc: Rod Risley
Encl.
MAN/tsh

WAIVER OF CONFLICTS OF INTEREST

THIS WAIVER is made by and among The Phi Beta Kappa Society ("Beta") and Phi Theta Kappa ("Theta") (hereinafter, all together, "Client Parties") and Morris A. Nunes, Esq. ("MAN") an attorney in Fairfax County, Virginia, together with his Virginia professional corporation, Morris A. Nunes, Atty., P.C. ("MANAPC") (hereinafter, MAN and MANAPC together, "Lawyer Parties") all agreeing as follows:

1. BACKGROUND: A. Beta and Theta have both separately been clients of the Lawyer Parties, for a variety of matters stretching over several years.

B. The Client Parties desire to enter into a reciprocal agreement for the purpose of protecting their separate trademarks and names.

2. CONFLICT: Beta and Theta have jointly agreed the Lawyer Parties to draft the said proposed agreement, which representation does or could present a conflict of interest between the Client Parties, in that advantages to one of the Client Parties in the particular language of such agreement could be disadvantageous to another, or that matters on which advice is sought by one party may require advice which could potentially be disadvantageous to the other party.

3. WAIVER: A. After explanation and upon due consideration, *including but not limited to the opportunity to consult with other counsel and advisors*, the undersigned, among whom it is acknowledged that said conflicts of interest may exist or do exist or both, do each and all waive such conflicts as to MAN and as to MANAPC and all associates, employees, staff, officers and directors thereof, so that the same may represent Beta in drafting such an agreement, for which Beta¹ will pay the attorney fees to the Lawyer Parties. *→ Theta* *1 Theta*

B. It is further intended and understood among the Parties that such agreement is designed to memorialize the terms of a pre-existing oral agreement originally made by the Parties without the assistance of any counsel as Beta and Theta have negotiated. The Parties may further negotiate, and the representation by the Lawyer Parties is not intended to create any advantage or disadvantage for one or the other of Beta and Theta, even though both Beta and Theta acknowledge and understand that each could seek and continue to be free to seek other legal counsel to try to obtain representation for such purposes.

C. Nothing in this Waiver shall be construed to prevent any party from terminating representation in any matter in accord with any agreement of representation.

4. BINDING: This waiver is binding upon all of the heirs, successors and assigns, jointly and severally, of each and all of the parties hereto.

5. WAIVER EFFECTIVE: This Waiver shall not be effective until signed by all of the parties and shall then be effective on the date last signed. Further, signature hereon by any party in the absence of all signatures shall not be binding upon any party nor constitute an admission or evidence as to, for or against any party.

--- *WAIVER OF CONFLICTS OF INTEREST*

6. LATER RECUSAL: Notwithstanding anything herein to the contrary, the parties hereto all agree that if it shall appear that additional matters of conflict shall arise or that any existing matters may or appear to prevent the Lawyer Parties from fulfilling all ethical duties despite this Waiver, any of the client parties may request that Maury and MANAPC later recuse themselves from further involvement in such transaction or Maury and MANAPC may voluntarily recuse themselves.

Client Parties:

The Phi Beta Kappa Society

Phi Theta Kappa

by: _____
Authorized Signatory

Authorized Signatory

Date: _____, 2000

Date: _____, 2000

Lawyer Parties:

MANAPC: Morris A. Nunes, Atty., P.C.

MAN:

by: _____
Authorized Signatory

Morris A. Nunes

Date: _____, 2000

Date: _____, 2000

EXHIBIT A-13

Document title:	Wikipedia:Conflict of interest - Wikipedia
Capture URL:	https://en.wikipedia.org/wiki/Wikipedia:Conflict_of_interest
Page loaded at (UTC):	Thu, 10 Oct 2024 20:54:20 GMT
Capture timestamp (UTC):	Thu, 10 Oct 2024 20:58:05 GMT
Capture tool:	10.51.0
Collection server IP:	54.145.42.72
Browser engine:	Mozilla/5.0 (X11; Linux x86_64) AppleWebKit/537.36 (KHTML, like Gecko) Chrome/126.0.6478.234 Safari/537.36
Operating system:	Linux (Node 20.17.0)
PDF length:	16
Capture ID:	2A7zGjLFHBj45ex8eapjcm
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Photograph a historic site, help Wikipedia, and win a prize. Participate in the world's largest photography competition this month!

Learn more



Wikipedia:Conflict of interest

58 languages

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- > Wikipedia's position
- > How to disclose a COI
- > What is conflict of interest?
- > Dealing with edit requests from COI or paid editors
 - Copyright of paid contributions
- > Covert advertising
- > Other categories of COI
- > Miscellaneous
- > How to handle conflicts of interest
 - See also
 - Further reading

Project page Talk

Read Edit View history Tools

Appearance hide

From Wikipedia, the free encyclopedia

If you want to report a problematic conflict of interest editor, see [Wikipedia:Conflict of interest/Noticeboard](#).

For practical advice for editors who might have a conflict of interest, see [Wikipedia:Plain and simple conflict of interest guide](#)

"[Wikipedia:Conflict](#)" redirects here. For other uses, see [Wikipedia:Conflict \(disambiguation\)](#).

This page documents an English Wikipedia behavioral guideline.

✓ Editors should generally follow it, though exceptions may apply. Substantive edits to this page should reflect consensus. When in doubt, discuss first on [this guideline's talk page](#).

Shortcuts

WP:COI

WP:CONFLICT

This page in a nutshell: Do not edit Wikipedia in your own interests, nor in the interests of your external relationships.

Conflict of interest (COI) editing involves contributing to Wikipedia about yourself, family, friends, clients, employers, or your financial and other relationships. Any [external relationship](#) can trigger a [conflict of interest](#). Someone having a conflict of interest is a description of a *situation*, not a judgment about that person's opinions, integrity, or [good faith](#).

COI editing is strongly discouraged on Wikipedia. It undermines public confidence and risks causing [public embarrassment](#) to the individuals and companies being promoted. Editors with a COI are sometimes [unaware of whether or how much](#) it has influenced their editing. If COI editing causes disruption, an administrator may opt to place blocks on the involved accounts.

Editors with a COI, including [paid editors](#), are expected to [disclose it](#) whenever they seek to change an affected article's content. Anyone editing for pay [must disclose who is paying them](#), who the client is, and any other relevant affiliation; this is a requirement of the [Wikimedia Foundation](#). COI editors are strongly discouraged from editing affected articles directly, and can propose changes on article talk pages instead. However, our [policy on matters relating to living people](#) allows very obvious errors to be fixed quickly, [including by the subject](#).

When investigating COI editing, *do not reveal the identity* of editors against their wishes. Wikipedia's

Wikipedia guidelines
Guidelines list • Policies list
Behavioral
Assume good faith • Conflict of interest • Courtesy vanishing • Disruptive editing • Don't bite the newcomers • Don't disrupt to make a point • Etiquette • Gaming the system • User pages • Other behavioral guidelines • WMF friendly space policy
Discussions
Talk page guidelines • Signatures
Content
Citing sources • External links • Reliable sources (medicine) • Fringe theories • Non-free content • Offensive material • Don't copy long texts • Don't create hoaxes • Patent nonsense • Other content guidelines
Editing
Article size • Be bold • Understandability • Other editing guidelines
Categorization
Categories, lists, templates • Categorization • Disambiguation
Style
Manual of Style (contents • lists • tables)

Text

- ☐ Small
- ☒ Standard
- ☐ Large

Width

- ☒ Standard
- ☐ Wide

Color (beta)

- ☐ Automatic
- ☒ Light
- ☐ Dark

Contents

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> Wikipedia's position

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> Other categories of COI

> Miscellaneous

> How to handle conflicts of interest

See also

Further reading

articles directly, and can propose changes on article talk pages. However, our documentation relating to living people allows very obvious errors to be fixed quickly, including by the subject.

When investigating COI editing, *do not* reveal the identity of editors against their wishes. Wikipedia's policy against harassment, and in particular the prohibition against disclosing personal information, **takes precedence** over this guideline. To report COI editing, follow the advice at [How to handle conflicts of interest](#), below. Editors making or discussing changes to this guideline or related guidance shall disclose whether they have been paid to edit Wikipedia.

Wikipedia's position

[edit]

Purpose of Wikipedia

[edit]

Further information: *Wikipedia:What Wikipedia is not*

As an encyclopedia, [Wikipedia's mission](#) is to provide the public with articles that summarize accepted knowledge, written neutrally and sourced reliably. Readers expect to find neutral articles written independently of their subject, not corporate or personal webpages, or platforms for advertising and self-promotion. Articles should contain only material that complies with Wikipedia's content policies and best practices, and Wikipedians must place the interests of the encyclopedia and its readers above personal concerns.

COI editing

[edit]

See also: *Wikipedia:Plain and simple conflict of interest guide*

Editors with a COI should follow Wikipedia policies and best practices scrupulously:

you should **disclose your COI** when involved with affected articles;

you are **strongly discouraged** from editing affected articles directly;

you may **propose changes** on talk pages (by using the `{{edit COI}}` template), so that they can be peer-reviewed;

you should put new articles through the [Articles for Creation \(AfC\)](#) process instead of creating them directly;

you should **not act as a reviewer** of affected article(s) at AfC, [new pages patrol](#) or elsewhere;

you should **respect other editors** by keeping discussions concise.

Note that no one on Wikipedia [controls articles](#). If Wikipedia hosts an article about you or your organization, others may add information that would otherwise remain little known. They may also decide to delete the article or decide to keep it should you later request deletion. The media has several times drawn attention to companies that engage in COI editing on Wikipedia (see [Conflict-of-interest editing on Wikipedia](#)), which has led to embarrassment for the organizations concerned.

Paid editing

[edit]

Being paid to contribute to Wikipedia is one form of financial COI; it places the paid editor in a conflict between their employer's goals and Wikipedia's goals. The kind of paid editing of most concern to the community involves using Wikipedia for public relations and marketing purposes. Sometimes called "paid advocacy," this is problematic because it invariably reflects the interests of the client or employer.

Other editing guidelines

Categories, lists, templates • Categorization • Disambiguation

Style

Manual of Style (contents • lists • tables)

Deletion

Deletion process • Speedy keep • Deletion guidelines for administrators

Project content

Project pages (WikiProjects) • Templates • User pages (User boxes) • Shortcuts • Subpages

Other

Naming conventions • Notability

Search

Search for a guideline

V • T • E

Appearance

hide

Text

Small

Standard

Large

Width

Standard

Wide

Color (beta)

Automatic

Light

Dark

Shortcut

WP:COIEDIT

Shortcuts

WP:PE

WP:PAY

WP:NOPR

WP:NOPAY

WP:FCOI

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> How to handle conflicts of interest

See also

Further reading

Being paid to contribute to Wikipedia is one form of financial COI; it places the paid editor in a conflict between their employer's goals and Wikipedia's goals.

The kind of paid editing of most concern to the community involves using Wikipedia for public relations and marketing purposes. Sometimes called "paid advocacy," this is problematic because it invariably reflects the interests of the client or employer.

More generally, an editor has a financial conflict of interest whenever they write about a topic with which they have a close financial relationship. This includes being an owner, employee, contractor, investor or other stakeholder.

The [Wikimedia Foundation](#) requires that all paid editing be disclosed. Additionally, [global policy](#) requires that (if applicable) you **must** provide links on your user-page to **all** active accounts on external websites through which you advertise, solicit or obtain paid editing. If you receive or expect to receive compensation (money, goods or services) for your contributions to Wikipedia, the policy on the English Wikipedia is:

- you must **disclose** who is paying you, on whose behalf the edits are made, and any other relevant affiliation;
- you should make the disclosure on your user page, **on affected talk pages**, and whenever you discuss the topic;
- you are **strongly discouraged** from editing affected articles directly;
- you may **propose changes** on talk pages by using the `{{edit COI}}` template, so that they can be peer-reviewed;
- you should put new articles through the [Articles for Creation \(AfC\)](#) process instead of creating them directly;
- you must **not act as a reviewer** of affected article(s) at AfC, [new pages patrol](#) or elsewhere;
- you should **respect volunteers** by keeping discussions concise (see [WP:PAYTALK](#)).

Requested edits are subject to the same standards as any other, and editors may decline to act on them. The [guide to effective COI edit requests](#) provides guidance in this area. To find an article's talk page, click the "talk" button at the top of the article. See [WP:TEAHOUSE](#) if you have questions about these things. If you are an administrator, you **must not use administrative tools for any paid-editing activity** (except when related to work as a [Wikipedian-in-residence](#), or as someone paid by the Wikimedia Foundation or an affiliate).

Wikimedia Foundation terms of use

[edit]

Further information: [Wikipedia:Paid-contribution disclosure](#)

The [Wikimedia Foundation's terms of use](#) require that editors who are being paid for their contributions disclose their *employer* (the person or organization who is paying for the edits); the *client* (the person or organization on whose behalf the edits are made); and any other relevant *affiliation*. This is the policy of the English Wikipedia.

How to disclose a COI

[edit]

General COI

[edit]

If you become involved in an article where you have any COI, you should always let other editors know about it, whenever and wherever you discuss the topic. There are three venues to do this.

1. If you want to use a template to do this, place `{{connected contributor}}` **at the top of the affected talk page**, fill it in as follows, and save:

Connected contributor template

[show]

Note that someone else may add this for you.

2. You can also make a statement in the [edit summary](#) of any COI contribution.

3. If you want to note the COI **on your user page**, you can use the `{{UserboxCOI}}`

Shortcuts

WP:PAY

WP:NOPR

WP:NOPAY

WP:FCOI

Appearance

hide

Text

☐ Small

☒ Standard

☐ Large

Width

☒ Standard

☐ Wide

Color (beta)

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> How to handle conflicts of interest

See also

Further reading

Conflict of interest template

Appearancehide

Note that someone else may add this for you.

2. You can also make a statement in the `edit summary` of any COI contribution.

3. If you want to note the COI **on your user page**, you can use the `{{UserboxCOI}}` template:

UserboxCOI template

[show]

Also, if you propose significant or potentially controversial changes to an affected article, you can use the `{{edit COI}}` template. Place this at the bottom of the talk page and state your suggestion beneath it (be sure to sign it with four tildes, ~~~~). If the proposal is **verifiable** and appropriate, it will usually be accepted. If it is declined, the editor declining the request will usually add an explanation below your entry.

Example

For a COI disclosure, see **Talk:Steve Jobs**

In this edit, one editor added a COI declaration for another editor.

Paid editors

[edit]

Further information: *Wikipedia:Paid-contribution disclosure*

"WP:UPE" redirects here. Not to be confused with *Wikipedia:Use plain English*.

Shortcuts

WP:COIPAYDISCLOSE

WP:COIDISCLOSEPAY

WP:UPE

If you are being paid for your contributions to Wikipedia, you must declare who is paying you, who the client is, and any other relevant role or relationship. You may do this on your user page, on the talk page of affected articles, or in your edit summaries. As you have a conflict of interest, you must ensure everyone with whom you interact is aware of your paid status, in all discussions on Wikipedia pages within any namespace. If you want to use a template to disclose your COI on a talk page, place `{{connected contributor (paid)}}` at the top of the page, fill it in as follows, and save:

Connected contributor (paid) template

[show]

The *employer* is whoever is paying you to be involved in the article (such as a PR company). The *client* is on whose behalf the payment is made (usually the subject of the article). If the employer and client are the same entity—that is, if Acme Corporation is paying you to write about Acme Corporation—the client parameter may be left empty. See `{{connected contributor (paid)}}` for more information. Note that other editors may add this template for you. Paid editing without such a declaration is called *undisclosed paid editing (UPE)*.

You are expected to maintain a clearly visible list on your user page of your paid contributions. If you advertise, solicit or obtain paid editing work via an account on any external website, you must provide links on your user-page to all such accounts.

If you propose changes to an affected article, you can use the `{{edit COI}}` template. Post it on the talk page and make your suggestion underneath it.

The use of administrative tools as part of any paid editing activity, except as a Wikipedian-in-Residence, or when the payment is made by the Wikimedia Foundation or an affiliate of the WMF, is considered a **serious misuse** and likely to result in sanctions or their removal.

What is conflict of interest?

[edit]

External roles and relationships

[edit]

While editing Wikipedia, an editor's primary role is to further the interests of the encyclopedia. When an external role or relationship could reasonably be said to undermine that primary role, the editor has a conflict of interest similar to how a judge's primary role as an impartial adjudicator would be undermined if they were married to one of the parties.

Shortcut

WP:EXTERNALREL

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External roles and relationships

While editing Wikipedia, an editor's primary role is to further the interests of the encyclopedia. When an external role or relationship could reasonably be said to undermine that primary role, the editor has a conflict of interest similar to how a judge's primary role as an impartial adjudicator would be undermined if they were married to one of the parties.

Any external relationship—personal, religious, political, academic, legal, or financial (including holding a [cryptocurrency](#))—can trigger a COI. How close the relationship needs to be before it becomes a concern on Wikipedia is governed by common sense. For example, an article about a band should not be written by the band's manager, and a biography should not be an [autobiography](#) or written by the subject's spouse. There can be a COI when writing on behalf of a competitor or opponent of the page subject, just as there is when writing on behalf of the page subject.

Subject-matter experts (SMEs) are welcome on Wikipedia within their areas of expertise, subject to the guidance below on [financial conflict of interest](#) and on [citing your work](#). SMEs are expected to make sure that their external roles and relationships in their field of expertise do not interfere with their primary role on Wikipedia.

COI is not simply bias

Further information: [WP:ADVOCACY](#)

Determining that someone has a COI is a **description of a situation**. It is not a judgment about that person's state of mind or integrity. A COI can exist in the absence of bias, and bias regularly exists in the absence of a COI. Beliefs and desires may lead to biased editing, but they do not constitute a COI. COI emerges from an editor's roles and relationships, and the *tendency to bias* that we assume exists when those roles and relationships conflict.

Why is conflict of interest a problem?

On Wikipedia, editors with a conflict of interest who unilaterally add material tend to violate Wikipedia's content and behavioral policies and guidelines. The content they add is typically unsourced or poorly sourced and often violates the [neutral point of view](#) policy by being [promotional](#) and omitting negative information. They may [edit war](#) to retain content that serves their external interest. They may overuse [primary sources](#) or [non-independent sources](#), and they may give too much [weight](#) to certain ideas.

Actual, potential and apparent COI

An **actual COI** exists when an editor has a COI with respect to a certain judgment *and* is in a position where the judgment must be exercised.

Example: A business owner has an actual COI if they edit articles and engage in discussions about that business.

A **potential COI** exists when an editor has a COI with respect to a certain judgment *but is not* in a position where the judgment must be exercised.

Example: A business owner has a potential COI with respect to articles and discussions about that business, but they have no actual COI if they stay away from those pages.

An **apparent COI** exists when there is reason to believe that an editor has a COI.

Example: Editors have an apparent COI if they edit an article about a business, and for some reason they appear to be the business owner or in communication with the business owner, although they may actually have no such connection. Apparent COI raises concern within the community and should be resolved through discussion whenever possible.

Dealing with edit requests from COI or paid editors

Further information: [Wikipedia:Edit requests](#)

Shortcut

WP:EXTERNALREL

Shortcut

WP:COINOTBIAS

Shortcuts

WP:ACTUALCOI

WP:POTENTIALCOI

WP:APPARENTCOI

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some reason they appear to be the business owner or in communication with the business owner, although they may actually have no such connection. Apparent COI raises concern within the community and should be resolved through discussion whenever possible.

Dealing with edit requests from COI or paid editors [\[edit \]](#)

Further information: [Wikipedia:Edit requests](#)

Responding to requests [\[edit \]](#)

Editors responding to edit requests from COI or paid editors are expected to do so carefully, particularly when commercial interests are involved. When large amounts of text are added to an article on behalf of the article subject, the article has, in effect, been [ghostwritten](#) by the subject without the readers' knowledge. Responding volunteers should therefore carefully check the proposed text and sources. That an article has been expanded does not mean that it is better.

- Make sure the proposed paid text complies with [WP:WEIGHT](#).
- Look for unnecessary detail that may have been added to overwhelm something negative.
- Make sure nothing important is missing. Responding editors should do their own search for [independent sources](#). **Do not rely on the sources offered by the paid editor.**
- Look for non-neutral language and unsourced or poorly sourced content.
- Be cautious about accepting content based on [self-published sources](#) such as a personal website, or [primary sources](#) such as a company website or press release.

If the paid text is added to the article, the edit summary should include full attribution.

Attribution in edit summaries [\[edit \]](#)

Further information: [Wikipedia:Copying within Wikipedia](#) and [Wikipedia:Copying text from other sources](#)

If editors choose to add material to an article on behalf of a COI or paid editor, they must provide [attribution](#) for the text in the [edit summary](#). The edit summary should include the name of the COI or paid editor, a link to the draft or edit request, and that the edit contains a COI or paid contribution. For example:

```
Text inserted on behalf of paid editor User:X; copied from [[Draft:Paid draft]].
```

or you can also use the following format, from text requested in a talk page,

```
Edit made due to [[WP:COI]] edit request by User:SVeatch; copied or adapted from "Revisions to Infobox, Introduction and History" at [[Special:Permalink/1213729307]]
```

The [permalink](#) helps avoid broken links when sections are archived.

This transparency helps editors and readers to determine the extent of COI influence on the article. It also complies with copyright requirements.

Paid editors on talk pages [\[edit \]](#)

Paid editors must respect the volunteer nature of the project and keep discussions concise. When proposing changes to an article, they should describe the suggested modifications and explain why the changes should be made. Any changes that may be contentious, such as removal of negative text, should be highlighted.

Before being drawn into long exchanges with paid editors, volunteers should be aware that paid editors may be submitting evidence of their talk-page posts to justify their salaries or fees. No editor should be expected to engage in long or repetitive discussions with someone who is being paid to argue with them

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Before being drawn into long exchanges with paid editors, volunteers should be aware that paid editors may be submitting evidence of their talk-page posts to justify their salaries or fees. No editor should be expected to engage in long or repetitive discussions with someone who is being paid to argue with them.

Editors who refuse to accept a consensus by arguing *ad nauseam* may find themselves in violation of the [guideline against disruptive editing](#).

Copyright of paid contributions [edit]

See also: *Work for hire*

Editors are reminded that any text they contribute to Wikipedia, assuming they own the copyright, is irrevocably licensed under a [Creative Commons-Attribution-Sharealike](#) license and the [GNU Free Documentation License](#). Content on Wikipedia, including article drafts and talk-page comments, can be freely copied and modified by third parties for commercial and non-commercial use, with the sole requirement that it be attributed to Wikipedia contributors.

Shortcuts
[WP:COICOPYRIGHT](#)
[WP:PAIDCOPYRIGHT](#)

Paid editors must ensure that they own the copyright of text they have been paid to add to Wikipedia; otherwise, they are unable to release it. A text's author is normally assumed to be the copyright holder. Companies sometimes provide paid editors with text written by someone else. Alternatively, a paid editor might write text for Wikipedia within the scope of their employment (a "[work for hire](#)"), in which case copyright resides with the employer.

Where there is doubt that the paid editor owns the copyright, they (or the employer or author) are advised to forward a release from the copyright holder to the [Volunteer Response Team](#) (permissions-en@wikimedia.org). See [WP:PERMISSION](#) for how to do this and [Wikipedia:Declaration of consent for all enquiries](#) for a sample letter.

If editors choose to add material to an article on behalf of a paid editor, they must provide [attribution](#) for the text in the [edit summary](#). See [WP:COIATTRIBUTE](#) for how to do this.

Covert advertising [edit]

See also: *Wikipedia:Reliable sources § Sponsored content*



This section in a nutshell: Avoid hidden advertising.

Shortcuts
[WP:COVERT](#)
[WP:NOHIDDENADS](#)

US: Federal Trade Commission, state law, and native advertising

[edit]

See also: *Native advertising*, *Consumer protection*, and *Direct-to-consumer advertising*

All editors are expected to follow United States law on undisclosed advertising, which is described by the [Federal Trade Commission](#) (FTC) at [Endorsement Guidelines](#) and [Dot Com Disclosures](#). The FTC regards advertising as deceptive if it mimics a content format, such as a news report, that appears to come from an independent, impartial source:

Marketers and publishers are using innovative methods to create, format, and deliver digital advertising. One form is "native advertising", content that bears a similarity to the news, feature articles, product reviews, entertainment, and other material that surrounds it online. ...



In digital media, native ads often resemble the design, style, and functionality of the media in which they are disseminated. ... The more a native ad is similar in format and topic to content on the publisher's site, the more likely that a disclosure will be necessary to prevent deception. —Federal Trade Commission, 2015

- Appearance hide
- Text
- ☐ Small
 - ☒ Standard
 - ☐ Large
- Width
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In digital media, native ads often resemble the design, style, and functionality of the media in which they are disseminated. ... The more a native ad is similar in format and topic to content on the publisher's site, the more likely that a disclosure will be necessary to prevent deception. —Federal Trade Commission, 2015

To judge whether an ad is deceptive under the [Federal Trade Commission Act of 1914](#), the FTC considers "both what the ad says and the format it uses to convey that information ... Advertisements or promotional messages are deceptive if they convey to consumers expressly or by implication that they're independent, impartial, or from a source other than the sponsoring advertiser ...".

State law may have similar prohibitions. While the FTC law may apply only to interstate and foreign commerce, state law applies to intrastate commerce and must be obeyed. At least one state court case found liability for an ad disguised as editorial content.^[*citation needed*]

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European fair-trading law

[edit]

See also: [Unfair Commercial Practices Directive](#)

In 2012 the Munich [Oberlandesgericht](#) court ruled that if a company or its agents edit Wikipedia with the aim of influencing customers, the edits constitute covert advertising, and as such are a violation of European fair-trading law. The ruling stated that readers cannot be expected to seek out user and talk pages to find editors' disclosures about their corporate affiliation.



UK Advertising Standards Authority

[edit]

The [Advertising Standards Authority](#) (ASA) in the UK found in 2012 that the content of [tweets](#) from two footballers had been "agreed with the help of a member of the Nike marketing team". The tweets were not clearly identified as Nike marketing communications and were therefore in breach of the ASA's code.

Advertising Standards Canada

[edit]

The [Canadian Code of Advertising Standards](#), administered by [Advertising Standards Canada](#), states: "No advertisement shall be presented in a format or style that conceals the fact that it is an advertisement."

Other categories of COI

[edit]

Legal and other disputes

[edit]

Further information: [WP:BLPCOI](#)

The [biographies of living persons policy](#) says: "[A]n editor who is involved in a significant controversy or dispute with another individual – whether on- or off-wiki – or who is an avowed rival of that individual, should not edit that person's biography or other material about that person, given the [potential conflict of interest](#)."

Similarly, editors should not write about court cases in which they or those close to them have been involved, nor about parties or law firms associated with the cases.

Shortcuts

[WP:COIBLP](#)

[WP:COILEGAL](#)

Campaigning, political

[edit]

See also: [WP:ADVOCACY](#)

Activities regarded by insiders as simply "getting the word out" may appear promotional or propagandistic to the outside world. If you edit articles while involved with campaigns in the same area, you may have a conflict of interest. Political candidates and their staff should not edit articles about themselves, their supporters, or their opponents. Government employees should not edit articles about their agencies, government, political party, political opponents, or controversial political topics.

Shortcuts

[WP:COICAMPAIGN](#)

[WP:COIPOLITICAL](#)

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appear promotional or propagandistic to the outside world. If you edit articles while involved with campaigns in the same area, you may have a conflict of interest. Political candidates and their staff should not edit articles about themselves, their supporters, or their opponents. Government employees should not edit articles about their agencies, government, political party, political opponents, or controversial political topics.

Writing about yourself, family, friends

[edit]

"WP:COI" redirects here. For the "credible claim of significance" essay, see Wikipedia:Credible claim of significance.

Further information: Wikipedia:Autobiography and WP:BLPCOI

Shortcuts

WP:COISELF

WP:SELF PROMOTE

You should generally refrain from creating articles about yourself, or anyone you know, living or dead, unless through the Articles for Creation process. If you have a personal connection to a topic or person with an existing article, you are advised to refrain from editing that article directly and to provide full disclosure of the connection if you comment about the article on talk pages or in other discussions. Requests for updates to an article about yourself or someone with whom you have a personal connection can be made on the article's talk page by following the instructions at WP:COIREQ.

An exception to not editing an article about yourself or someone you know is made if the article contains defamation or a serious error that needs to be corrected quickly. If you do make such an edit, please follow it up with an email to WP:VRT, Wikipedia's volunteer response team, or ask for help on WP:BLPN, our noticeboard for articles about living persons, or the talk page of the article in question.

Citing yourself

[edit]

"WP:SELF CITE" redirects here. For Wikipedia citing itself, see WP:CIRCULAR.

See also: WP:MEDCOI

Shortcut

WP:SELF CITE

Using material you have written or published is allowed within reason, but only if it is relevant, conforms to the content policies, including WP:SELF PUB, and is not excessive. Citations should be in the third person and should not place undue emphasis on your work. You will be permanently identified in the page history as the person who added the citation to your own work. When in doubt, defer to the community's opinion: propose the edit on the article's talk page and allow others to review it. However, adding numerous references to work published by yourself and none by other researchers is considered to be a form of spamming.

Cultural sector

[edit]

"WP:CURATOR" redirects here. For the tool used by Wikipedia:New pages patrol, see Wikipedia:Page Curation.

Further information: Wikipedia:GLAM, Wikipedia:Advice for the cultural sector, and Wikipedia:The Wikipedia Library/Cultural Professionals

Shortcut

WP:CURATOR

Museum curators, librarians, archivists, and similar are encouraged to help improve Wikipedia, or to share their information in the form of links to their resources. If a link cannot be used as a reliable source, it may be placed under further reading or external links if it complies with the external links guideline. Bear in mind that Wikipedia is not a mirror or a repository of links, images, or media files.

See also WP:Expert editors.

Wikipedians in residence

[edit]

There are forms of paid editing that the Wikimedia community regards as acceptable. These include Wikipedians in residence (WiRs)—Wikipedians who may be paid to collaborate with mission-aligned organizations, such as galleries, libraries, archives, and museums. WiRs must not engage in public relations or

Shortcut

WP:WIRCOI

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Wikipedians in residence [edit]

There are forms of paid editing that the Wikimedia community regards as acceptable. These include [Wikipedians in residence](#) (WiRs)—Wikipedians who may be paid to collaborate with mission-aligned organizations, such as [galleries, libraries, archives, and museums](#). WiRs must not engage in public relations or marketing for their organization in Wikipedia, and they should operate within the bounds defined by [Core characteristics of a Wikipedian in Residence](#) at [Wikimedia Outreach](#). They must work closely with a Wikipedia project or the general Wikipedia community, and are expected to identify their WiR status on their user page and on talk pages related to their organization when they post there.

Shortcut

WP:WIRCOI

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Reward board [edit]

Another example of acceptable paid editing is the [reward board](#), where editors can post incentives, usually to raise articles to featured-article or good-article status. If you participate in this, transparency and neutrality are key.

Miscellaneous [edit]

Solicitations by paid editors [edit]

In any solicitation sent to a prospective client, paid editors should disclose the following information:

- Paid editors do not represent the Wikimedia Foundation nor the Wikipedia editing community, and they have no authority beyond that of any volunteer editor.
- Paid editors must disclose their employer, client, and affiliations on Wikipedia. There is no confidentiality for the client.
- Paid edits may be reviewed and revised in the normal course of work on Wikipedia. Neither the client nor the paid editor own the article.
- Paid editors cannot guarantee any outcome for an article on Wikipedia. It can be revised or deleted by other editors at any time.

Providing a client with a link to this section is appropriate disclosure if it is done in a neutral and non-deceptive manner.

- Paid editors must also provide a link to their user page which includes a [declaration of their paid editing status](#). If an external website claims that a particular Wikipedia editor works for them, but that editor's user page has no such declaration, this is likely to indicate that the website is impersonating that editor.

If you received a solicitation from a paid editor that does not include this information, we recommend that you not do business with them. They are not following our policies and guidelines.

Beware of scams [edit]

Further information: [Wikipedia:Articles for creation/Scam warning](#)

Shortcut

WP:BEWARESCAM

Some solicitations from paid editors have been linked to [fraud](#); see for example [Operation Orangemoody](#). A [large number of businesses](#) claim to offer editing services, but some of these are scams. If someone claims that experienced editors work for them, ask them for the user names of those editors and check the corresponding editor user pages for a [paid-contribution disclosure](#); its absence likely indicates that the claim is false. Offers to guarantee that a page will be saved from deletion, in return for significant sums of money, are always fraudulent, as are offers to use special privileges on Wikipedia.

If you think you've received a fraudulent solicitation, please forward it to paid-en-wp@wikipedia.org for investigation.

Law of unintended consequences [edit]

Further information: [Wikipedia:Wikipedia is in the real world](#)

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See also

Further reading

money, are always fraudulent, as are offers to use special privileges on Wikipedia.
If you think you've received a fraudulent solicitation, please forward it to paid-en-wp@wikipedia.org for investigation.

Law of unintended consequences [\[edit \]](#)

Further information: [Wikipedia:Wikipedia is in the real world](#)

Once an article is created about yourself, your group, or your company, [you have no right](#) to control its content, or to delete it outside the [normal channels](#). If there is anything publicly available on a topic that you would *not* want to have included in an article, it will probably find its way there eventually.

Shortcut

WP:LUC

No shared accounts, no company accounts [\[edit \]](#)

Further information: [WP:NOSHARE](#) and [WP:ORGNAME](#)

Do not create a shared organizational account, or use the name of an organization as the account name. The account is yours, not your employer's.

Making uncontroversial edits [\[edit \]](#)

Editors who have a general conflict of interest may make unambiguously uncontroversial edits (but see [WP:FINANCIALCOI](#)). They may:

Shortcuts

WP:COIADVICE

WP:COIU

1. remove [spam](#) and unambiguous [vandalism](#),
2. remove unambiguous violations of the [biography of living persons](#) policy,
3. fix spelling, grammatical, or markup errors,
4. repair [broken links](#),
5. remove their own COI edits, and
6. add independent [reliable sources](#) when another editor has requested them, although it is better to supply them on the talk page for others to add.

If another editor objects for any reason, it is not an uncontroversial edit. Edits not covered by the above should be discussed on the article's talk page. If an article has few uninvolved editors, ask at the talk page of a related [WikiProject](#) or at the [COI noticeboard](#). See also [WP:COITALK](#).

Supplying photographs and media files [\[edit \]](#)

Editors with a COI are encouraged to upload high-quality media files that are appropriately licensed for Wikipedia and that improve our coverage of a subject. For more information, follow the [instructions at Commons](#). In some cases, the addition of media files to an article may be an uncontroversial edit that editors with a COI can make directly, but editors should exercise discretion and rely on talk pages when images may be controversial or promotional. If the addition of an image is challenged by another editor, it is controversial.

The use of [non-free](#) contents are restricted. Generally, using press photos or images provided by client who wish to feature them in the article but unwilling to irrevocably release the copyright under Creative Commons is unacceptable. Editors may not upload images provided by client for "Wikipedia article purpose only" and falsely claim they're licensed under CC BY-SA, as such photos are fundamentally incompatible with free content principles. Only the copyright owner or their authorized representatives may grant permission to use a work under a Creative Commons license, not the photographed subject or their public relations agent. If the same image is found copyrighted elsewhere prior to the upload date, it may be removed as a copyright violation. If you are the copyright owner and want to release content to Creative Commons for use on Wikipedia, see [Commons:Volunteer Response Team § Licensing images: when do I contact VRT?](#).

How to handle conflicts of interest [\[edit \]](#)

Advocacy, noticeboards [\[edit \]](#)

Main pages: [Wikipedia:Neutral point of view/Noticeboard](#) and [Wikipedia:Reliable sources/Noticeboard](#)

Appearance

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- > **How to handle conflicts of interest**
- See also
- Further reading

How to handle conflicts of interest [\[edit \]](#)

Advocacy, noticeboards [\[edit \]](#)

Main pages: [Wikipedia:Neutral point of view/Noticeboard](#) and [Wikipedia:Reliable sources/Noticeboard](#)

If a user's edits lead you to believe that they might have a COI (that is, if they have an "apparent COI"), and there has been no COI disclosure, consider first whether the issue may be simple [advocacy](#). Most advocacy does not involve COI. Whether an editor is engaged in advocacy should first be addressed at the user's talk page, then at [WP:NPOVN](#), the neutral-point-of-view noticeboard. The appropriate forum for concerns about sources is [WP:RSN](#), the reliable-sources noticeboard. If there are concerns about [sockpuppets](#) or [meatpuppets](#), please bring that concern to [WP:SPL](#).

Reporting to the conflict of interest noticeboard [\[edit \]](#)

Main page: [Wikipedia:Conflict of interest/Noticeboard](#)

If you believe an editor has an undisclosed COI and is editing in violation of this guideline, raise the issue in a civil manner on the editor's talk page, which is the first step in resolving user-conduct issues, per the [dispute resolution policy](#), citing this guideline. If that fails to resolve the issue, such as when an editor has repeatedly added problematic material over an extended period, then open a discussion at the [conflict of interest noticeboard \(COIN\)](#). This also applies to a [disclosed COI](#) that is causing a problem: for example, an acknowledged BLP subject who is editing their own BLP.

Shortcut

WP:COICOIN

During the COIN discussion, avoid making disparaging remarks about the user in question, their motives or the subject of the article(s).

Post whatever public evidence you have to support that there is a COI, or that it is causing a problem, in the form of edits by that user or information the user has posted about themselves. Do not post private information; see [WP:OUTING](#), which is policy, and the section below, "Avoid outing".

If private information must be shared to resolve a COI issue, it may be emailed to paid-en-wp@wikipedia.org. Follow the advice in [WP:OUTING](#): "Only the minimum information necessary should be conveyed and the minimum number of people contacted." The priority should be to avoid unnecessary privacy violations.

Avoid outing [\[edit \]](#)

Further information: [Wikipedia:Harassment § Posting of personal information](#), and [Wikipedia:Wikimedia Foundation statement on paid editing and outing](#)

Shortcut

WP:AVOIDOUTING

When investigating COI editing, the [policy against harassment](#) takes precedence. It requires that Wikipedians [not reveal the identity of editors](#) against their wishes. Examine editors' behavior instead and seek advice by email if necessary. Do not ask a user if they are somebody; instead one can ask if they have an undisclosed connection to that person. If revealing private information is needed to resolve COI editing, and if the issue is serious enough to warrant it, editors can **email** paid-en-wp@wikipedia.org. Also see the section "[Reporting to the conflict of interest noticeboard](#)" above.

Dealing with single-purpose accounts [\[edit \]](#)

Further information: [Wikipedia:Blocking policy § Disruption-only](#), and [Wikipedia:Single-purpose account](#)

Accounts that appear to be [single-purpose](#), existing for the sole or primary purpose of promotion or denigration of a person, company, product, service, website, organization, etc., and whose postings are in apparent violation of this guideline, should be made aware of this guideline and warned not to continue their problematic editing. If the same pattern of editing

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Accounts that appear to be **single-purpose**, existing for the sole or primary purpose of promotion or denigration of a person, company, product, service, website, organization, etc., and whose postings are in apparent violation of this guideline, should be made aware of this guideline and warned not to continue their problematic editing. If the same pattern of editing continues after the warning, the account may be blocked.

Templates [edit]

Relevant article talk pages may be tagged with `{{connected contributor}}` or `{{connected contributor (paid)}}`. The article itself may be tagged with `{{COI}}`. A section of an article can be tagged with `{{COI|section}}`

Other templates include:

- `{{uw-coi}}` (to be placed on user Talk pages to warn editors that they may have a conflict of interest)
- `{{uw-coi-username}}` (another Talk page warning, this one for editors whose username appears to violate the **WP:Usernames** policy)
- `{{COI editnotice}}` (this template goes on article talk pages and gives instructions to COI editors on how to submit edit requests to the article)
- `{{UserboxCOI}}` (for users to self-declare on their own Userpages those articles with which they have a conflict of interest, one such template per article)

See also [edit]

Wikimedia Foundation

- Terms of Use#4. Refraining from Certain Activities**
- Sue Gardner, "Press releases/Sue Gardner statement paid advocacy editing" ↗, Wikimedia Foundation, 21 October 2013.

Contact us

- Wikipedia:Contact us/Article subjects**

Article

- Conflict of interest editing on Wikipedia**

Policies

- Wikipedia:Paid-contribution disclosure**
- Wikipedia:Username policy**
- Wikipedia:What Wikipedia is not**

Wikiprojects

- Wikipedia:WikiProject Integrity**

Miscellaneous

- Wikipedia:About you**
- Wikipedia:The Wikipedia Library/Cultural Professionals**
- Category:Wikipedia conflict of interest edit requests** (lists edits for review where proposer has a conflict of interest)
- Category:Wikipedia articles with possible conflicts of interest**
- Wikipedia:Reward board**
- Wikipedia:FAQ/Article subjects**
- User:COIBot**
- Users creating autobiographies** ↗ (an edit filter)
- Statement on Wikipedia from participating communications firms**, June 2014

Essays

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See also
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- Wikipedia:Reward board
- Wikipedia:FAQ/Article subjects
- User:COIBot
- Users creating autobiographies (an edit filter)
- Statement on Wikipedia from participating communications firms, June 2014

Essays

- Wikipedia:Best practices for editors with close associations
- Wikipedia:Conflicts of interest (medicine)
- Wikipedia:Deceptive advertising
- Wikipedia:Don't cry COI
- Wikipedia:For publicists publicizing a client's work
- Wikipedia:Ghostwriting
- Wikipedia:Help available for editors with conflicts of interest
- Wikipedia:Independent sources
- Wikipedia:Paid editing (essay)
- Wikipedia:Plain and simple conflict of interest guide
- Wikipedia:Public relations (essay)
- Wikipedia:Search engine optimization
- Wikipedia:Wikipedia is in the real world

Historical

- Wikipedia:WikiProject Cooperation (defunct)
- Wikipedia community discussion on paid editing, 2009, sparked by discovery that admin/crat/OTRS editor was editing for pay
- Wikipedia community discussion on conflict of interest, 2012.
- Wikipedia:COI+ (failed proposal, 21 February 2013)
- Commercial editing (failed policy proposal turned into an essay, November 2013)
- No paid advocacy (failed policy proposal, November 2013)
- Paid editing policy proposal (failed policy proposal, November 2013)
- Conflict of interest limit (failed policy proposal, December 2013)

Further reading [edit]

(chronological)

Wikimedia Commons has media related to **Conflict-of-interest editing on Wikipedia**.

Davis, Michael (1982). "Conflict of Interest" , *Business and Professional Ethics Journal*, 1(4), pp. 17–27 (influential). doi:10.5840/bpej1982149

Luebke, Neil R. (1987). "Conflict of Interest as a Moral Category," *Business & Professional Ethics Journal*, 6, pp. 66–81. JSTOR 27799930 (influential)

Davis, Michael (Winter 1993). "Conflict of Interest Revisited," *Business & Professional Ethics Journal*, 12(4), pp. 21–41. JSTOR 27800924

Stark, Andrew (2003). *Conflict of Interest in American Public Life* , Harvard University Press.

Carson, Thomas L. (January 2004). "Conflicts of Interest and Self-Dealing in the Professions: A Review Essay," *Business Ethics Quarterly*, 14(1), pp. 161–182. JSTOR 3857777

Krimsky, Sheldon (2006). "The Ethical and Legal Foundations of Scientific 'Conflict of Interest'" , in Trudo Lemmings and Duff R. Waring (eds.), *Law and Ethics in Biomedical Research: Regulation, Conflict of Interest, and Liability*, University of Toronto Press.

McDonald, Michael (23 April 2006). "Ethics and Conflict of Interest" , The W. Maurice Young Center for Applied Ethics, University of British Columbia.

<div>V•T•E</div>	<div>Wikipedia key policies and guidelines (?)</div>	<div>[show]</div>
<div>V•T•E</div>	<div>Conflict of interest</div>	<div>[hide]</div>
<div>Issues</div>	<div>Chinese wall • Conflict of interest in the healthcare industry • Conflicts of interest on Wikipedia • Funding bias • Insider trading • Judicial disqualification • Nepotism • Regulatory capture • Self-dealing • Self-regulation • State capture • Shill</div>	
<div>Related</div>	<div>AllTrials • Arm's length principle • Bias • Business ethics • Cochrane • Corruption • Cui bono • Follow the money • Legal ethics • Lobbying • Medical ethics (cases) • Medical ghostwriter • Moral hazard • Pharmaceutical marketing • Pharmaceutical sales representative • Pharmacovigilance • Political ethics • Political bias • Revolving door •</div>	

Document title: Wikipedia:Conflict of interest - Wikipedia

Capture URL: https://en.wikipedia.org/wiki/Wikipedia:Conflict_of_interest

Capture timestamp (UTC): Thu, 10 Oct 2024 20:58:05 GMT

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See also

Further reading

- History
- Wikipedia:WikiProject Cooperation (defunct)

Wikipedia community discussion on paid editing, 2009, sparked by discovery that admin/crat/OTRS editor was editing for pay

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Luebke, Neil R. (1987). "Conflict of Interest as a Moral Category," *Business & Professional Ethics Journal*, 6, pp. 66–81. [JSTOR 27799930](#) [↗] (influential)

Davis, Michael (Winter 1993). "Conflict of Interest Revisited," *Business & Professional Ethics Journal*, 12(4), pp. 21–41. [JSTOR 27800924](#) [↗]

Stark, Andrew (2003). *Conflict of Interest in American Public Life* [↗], Harvard University Press.

Carson, Thomas L. (January 2004). "Conflicts of Interest and Self-Dealing in the Professions: A Review Essay," *Business Ethics Quarterly*, 14(1), pp. 161–182. [JSTOR 3857777](#) [↗]

Krimsky, Sheldon (2006). "The Ethical and Legal Foundations of Scientific 'Conflict of Interest'" [↗], in Trudo Lemmings and Duff R. Waring (eds.), *Law and Ethics in Biomedical Research: Regulation, Conflict of Interest, and Liability*, University of Toronto Press.

McDonald, Michael (23 April 2006). "Ethics and Conflict of Interest" [↗], The W. Maurice Young Center for Applied Ethics, University of British Columbia.

Wikipedia key policies and guidelines (?)		[show]
Conflict of interest		[hide]
Issues	Chinese wall • Conflict of interest in the healthcare industry • Conflicts of interest on Wikipedia • Funding bias • Insider trading • Judicial disqualification • Nepotism • Regulatory capture • Self-dealing • Self-regulation • State capture • Shill	
Related	AllTrials • Arm's length principle • Bias • Business ethics • Cochrane • Corruption • Cui bono • Follow the money • Legal ethics • Lobbying • Medical ethics (cases) • Medical ghostwriter • Moral hazard • Pharmaceutical marketing • Pharmaceutical sales representative • Pharmacovigilance • Political ethics • Political bias • Revolving door • Sponsorship of continuing medical education	
Law	Nemo iudex in causa sua • R v Bow Street Metropolitan Stipendiary Magistrate, ex parte Pinochet (No 2) • R v Neil • R v Sussex Justices, ex parte McCarthy	
Media	Bad Pharma • Big Pharma • Inside Job • Side Effects • Who Killed the Electric Car? • Taken for a Ride	
<div><div><div></div></div> Conflict of interest (category) • <div><div></div></div> Conflicts of interest on Wikipedia (category)</div>		
Categories: Wikipedia behavioral guidelines Wikipedia notability Wikipedia conflict of interest guidelines		

EXHIBIT A-14

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION

PHI THETA KAPPA HONOR SOCIETY,)
)
Plaintiff/Counter-Defendant) Civil Action No.
) 3:22-cv-00208-CWR-
v.) RPM
)
HONORSOCIETY.ORG, INC.,)
)
Defendant/Counter-Plaintiff)
/Third-Party Plaintiff)
HONOR SOCIETY FOUNDATION, INC.,)
)
Defendant)
_____)
)
And Related Cross-Action.)
_____)

VIDEOTAPED DEPOSITION OF
DAVID ASARI
SHERMAN OAKS, CALIFORNIA
MAY 2, 2024

REPORTED BY: ELIZABETH TORSTENBO, CSR NO. 9048, RPR
FILE NO.: 6679279

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION

PHI THETA KAPPA HONOR SOCIETY,)
)
Plaintiff/Counter-Defendant) Civil Action No.
) 3:22-cv-00208-CWR-
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HONORSOCIETY.ORG, INC.,)
)
Defendant/Counter-Plaintiff)
/Third-Party Plaintiff)
HONOR SOCIETY FOUNDATION, INC.,)
)
Defendant)
_____)
)
And Related Cross-Action.)
_____)

Deposition of DAVID ASARI, taken on behalf of
Plaintiff, at 15260 Ventura Boulevard, 20th Floor,
Sherman Oaks, California, commencing at 9:05 a.m.,
Thursday, May 2, 2024, before Elizabeth Torstenbo, CSR
No. 9048, RPR.

1 evidence.

2 BY MR. POLAK:

3 Q. Well, I'll just ask you more generally,
4 then. What do you recall Mr. Moradian saying about the
5 records request that you were discussing?

6 A. I think we were talking, generally
7 speaking, and we -- we both were talking about what --
8 what information we'd like to get. We'd like to do a
9 public records request because I have experience doing
10 that. And we thought getting GPA statistics would be a
11 good idea from -- from their -- from schools. And
12 then, also, generally, what's -- what we would be
13 asking for in terms of the requests directly with PTK.

14 Q. Why would it be a good idea to get this
15 information from schools, the GPA statistics, at that
16 time?

17 A. I think we -- we wanted to get an idea of
18 what the GPA statistics were.

19 Q. But why? You hadn't ever sent a similar
20 request out asking for this level of detail of GPA
21 statistics before, had you?

22 A. Not this exact request.

23 Q. Yeah. So why? Why then, in March of
24 2024? You'd never done it before. Why then?

25 A. We were concerned that -- that, possibly,

1 the GPA -- we just wanted -- I think we just wanted to
2 make sure that --

3 Q. You were going to start -- finish the
4 sentence there. You were concerned the GPA what?

5 A. Well, we wanted to get an idea of if
6 PTK's claims of 10 percent were -- being in the top
7 10 percent were correct. So that would be --

8 Q. And that's something that you and
9 Mr. Moradian were talking about there at your son's
10 party was this litigation and the claims that PTK had
11 made in advertising; right?

12 A. We weren't really talking about the
13 litigation. We were just talking about if those claims
14 were correct.

15 Q. Okay. And so this GPA statistics request
16 emerged from that conversation; right?

17 A. That's right.

18 Q. Okay. Let's look at the -- well, did you
19 talk about any other types of information that you
20 would want to get when you were having this
21 conversation with Mr. Moradian at your son's birthday
22 party?

23 A. Not specifically. We wanted to -- I think
24 the other part of the request is just communication
25 between the schools. There was no real --

1 THE VIDEOGRAPHER: We are off the record at
2 6:39 p.m.

3
4 (TIME NOTED: 6:39 p.m.)

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1 I, the undersigned, a Certified Shorthand
2 Reporter of the State of California, do hereby certify:

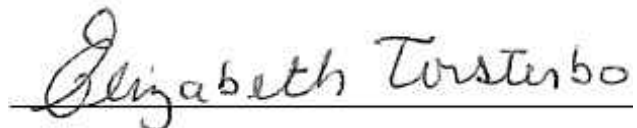
3 That the foregoing proceedings were taken
4 before me at the time and place herein set forth; that
5 any witnesses in the foregoing proceedings, prior to
6 testifying, were administered an oath; that a record of
7 the proceedings was made by me using machine shorthand
8 which was thereafter transcribed under my direction;
9 that the foregoing transcript is an true record of the
10 testimony given.

11 Further, that if the foregoing pertains to
12 the original transcript of a deposition in a Federal
13 Case, before completion of the proceedings, review of
14 the transcript [] was [] was not requested.

15 I further certify I am neither financially
16 interested in the action nor a relative or employee of
17 any attorney or any party to this action.

18 IN WITNESS WHEREOF, I have this date
19 subscribed my name.

20
21 DATED: 7th day of May, 2024.

22 
23

ELIZABETH TORSTENBO, RPR

24 CSR No. 9048
25

EXHIBIT A-15

Cost Report

Phi Theta Kappa Society / Trademark Infringement

Date	Description	Attorney	Orig Amt	Rev Amt	Vendor	Voucher	Check No.	Invoice	Narrative
03/13/2024	Westlaw search - in contract	1079	25.00	0.00		0	0	6304101	WESTLAW CHARGES MARCH, 2024
03/13/2024	Westlaw search - in contract	2973	100.00	0.00		0	0	6304101	WESTLAW CHARGES MARCH, 2024
03/13/2024	Westlaw search - in contract	0983	89.23	0.00		0	0	6304101	WESTLAW CHARGES MARCH, 2024
03/17/2024	Westlaw search - in contract	0983	25.00	0.00		0	0	6304101	WESTLAW CHARGES MARCH, 2024
03/18/2024	Westlaw search - in contract	0983	267.68	0.00		0	0	6304101	WESTLAW CHARGES MARCH, 2024
03/19/2024	Westlaw search - in contract	0983	178.46	0.00		0	0	6304101	WESTLAW CHARGES MARCH, 2024
03/20/2024	Westlaw search - in contract	2973	150.00	0.00		0	0	6304101	WESTLAW CHARGES MARCH, 2024
03/21/2024	Travel	JGPO	400.00	400.00	Jonathan G. Polak	2861589	999105764	6304101	Travel, Jonathan G. Polak, J. Polak receipt for flight for 3/27/2024 Evidentiary Hearing.
03/21/2024	Westlaw search - in contract	2973	350.00	0.00		0	0	6304101	WESTLAW CHARGES MARCH, 2024
03/23/2024	Westlaw search - in contract	0983	25.00	0.00		0	0	6304101	WESTLAW CHARGES MARCH, 2024
03/24/2024	Westlaw search - in contract	0983	25.00	0.00		0	0	6304101	WESTLAW CHARGES MARCH, 2024
03/25/2024	Westlaw search - in contract	1079	1,175.00	0.00		0	0	6304101	WESTLAW CHARGES MARCH, 2024
03/26/2024	Westlaw search - in contract	1079	150.00	0.00		0	0	6304101	WESTLAW CHARGES MARCH, 2024
03/27/2024	Deposition/transcript	JGPO	829.25	829.25	Candice Simmons Crane	2867921	30351	6304101	Deposition/transcript, Candice Simmons Crane, Payment for transcript of March 27, 2024 hearing.
03/28/2024	Travel	JGPO	1,969.48	1,969.48	Jonathan G. Polak	2864219	999106142	6304101	Travel, Jonathan G. Polak, J. Polak reimbursement for Westin Hotel stay March 25-28, 2024 for March 27, 2024 hearing.
03/28/2024	Travel	JGPO	25.18	25.18	Jonathan G. Polak	2864220	999106142	6304101	Travel, Jonathan G. Polak, J. Polak reimbursement for uber on March 28, 2024 from hotel to airport.
04/01/2024	Travel	0960	1,610.68	0.00	William Michael Etienne	2864215	999106186	6330424	[Delete] Travel, William Michael Etienne, Attorney Reimbursement for Travel Expense 25Mar2024
06/12/2024	Westlaw search - in contract	0983	50.00	0.00		0	0	6376040	WESTLAW CHARGES JUNE, 2024
07/06/2024	Westlaw search - in contract	0983	75.00	0.00		0	0	6402281	WESTLAW CHARGES JULY, 2024
07/11/2024	Westlaw search - in contract	0983	75.00	0.00		0	0	6402281	WESTLAW CHARGES JULY, 2024

7/10/2024	Travel	JGPO	400.00	400.00	Jonathan G. Polak				Airfare, Jonathan G. Polak, Reimbursement for flight from Indianapolis to Jackson, 7-12-24
7/12/2024	Uber	JGPO	67.31	67.31	Jonathan G. Polak				Evidentiary Hearing Uber charges, Jonathan G. Polak, July
7/12/2024	Travel	JGPO	548.97	548.97	Jonathan G. Polak				Evidentiary Hearings
7/13/2024	Travel	JGPO	950.12	950.12	Jonathan G. Polak				Airfare, Jonathan G. Polak, Reimbursement for flight from Jackson to Indianapolis, 7-12-24
07/13/2024	Deposition/transcript	JGPO	286.20	286.20	Teri Barker Norton, RMR, FCRR, RDR	2901111	34821	6431362	Evidentiary Hearing Travel, Jonathan G. Polak, Hotel Charge for 7-12-24 Evidentiary Hearing Deposition/transcript, Teri Barker Norton, RMR, FCRR, RDR, Evidentiary Hearing transcript, V. 1 (7/12/24)
07/17/2024	Federal Express	9911	102.07	102.07	Federal Express Corp	2895327	8112575	6402281	Federal Express Sent: 07/09/2024 FROM Taft Service Center, TO Mike Wallace, Airbill#: 777303067784
07/17/2024	Federal Express	9911	229.63	229.63	Federal Express Corp	2895327	8112575	6402281	Federal Express Sent: 07/10/2024 FROM DeeAnn Cassady, TO Kelly S. Hatter, Airbill#: 777322449417
07/18/2024	Deposition/transcript	JGPO	1,452.00	1,452.00	Teri Barker Norton, RMR, FCRR, RDR	2901112	34821	6431362	Deposition/transcript, Teri Barker Norton, RMR, FCRR, RDR, Evidentiary Hearing transcript, V. 2 (7/12/24)
07/18/2024	Travel	JGPO	771.15	771.15	Jonathan G. Polak	2902373	999115046	6431362	Travel, Jonathan G. Polak, Hotel Charge for 7-17-24 Evidentiary Hearing
7/18/2024	Airfare	JGPO	400.00	400.00	Jonathan G. Polak				Airfare, Jonathan G. Polak, Reimbursement for flight from Jackson to Indianapolis, 7-17-27 Evidentiary Hearing
07/19/2024	Airfare	0960	1,718.92	1,718.92	William Michael Etienne	2896072	999113446	6402281	Airfare, William Michael Etienne, Attorney Travel Reimbursement for Wm Michael Etienne; Travel date July 11-13 and 16-19, 2024, arrival Jackson, MS.; TRO Hearing.
07/19/2024	Travel	0960	1,406.78	1,406.78	William Michael Etienne	2896072	999113446	6402281	Travel, William Michael Etienne, Hotel stays
07/22/2024	Westlaw search - out of contract	DRW	5.39	0.00		0	0	6402281	WESTLAW CHARGES JULY, 2024
08/05/2024	Westlaw search - in contract	0983	1,004.10	0.00		0	0	6431362	WESTLAW CHARGES August, 2024
08/31/2024	Westlaw search - in contract	DRW	50.00	0.00		0	0	6431362	WESTLAW CHARGES August, 2024
09/09/2024	Westlaw search - in contract	0983	893.45	893.45		0	0	0	WESTLAW CHARGES September, 2024
09/10/2024	Westlaw search - in contract	0983	1,473.03	1,473.03		0	0	0	WESTLAW CHARGES September, 2024
09/11/2024	Westlaw search - in contract	0983	89.23	89.23		0	0	0	WESTLAW CHARGES September, 2024
09/16/2024	Westlaw search - in contract	1079	25.00	25.00		0	0	0	WESTLAW CHARGES September, 2024
09/17/2024	Westlaw search - in contract	1079	75.00	75.00		0	0	0	WESTLAW CHARGES September, 2024

09/17/2024	Westlaw search - in contract	0983	50.00	50.00		0	0	0	WESTLAW CHARGES September, 2024
09/18/2024	Professional services	JGPO	3,265.00	3,265.00	Page Vault, Inc.	2908116	0	0	Professional services, Page Vault, Inc., preservation of Honor Society Foundation May and June blog posts with affidavit
09/23/2024	Westlaw search - in contract	2369	175.00	175.00		0	0	0	WESTLAW CHARGES September, 2024
			23,033.31	17,602.77					

EXHIBIT A-16

Veritext, LLC - Midwest Region

Tel. 800-554-3376 Email: billing-midwest@veritext.com
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Bill To: Jonathan G. Polak
 Taft Stettinius & Hollister LLP
 One Indiana Square
 Suite 3500
 Indianapolis, IN, 46204

Invoice #: 7771876
 Invoice Date: 10/10/2024
 Balance Due: \$4,613.57

Case: Phi Theta Kappa Honor Society v. Honorsociety.Org Inc Et Al (3:22-cv-00309-cwr-rpm)

Proceeding Type: Depositions

Job #: 6946296 | Job Date: 10/1/2024 | Delivery: Expedited

Location: Los Angeles, CA

Billing Atty: Jonathan G. Polak

Scheduling Atty: Jonathan G. Polak | Taft Stettinius & Hollister LLP

Witness: Michael Moradian	Amount
Transcript Services	\$1,731.45
Transcript Services - Priority Request	\$1,038.87
Rough Draft	\$589.05
Professional Attendance	\$715.00
Exhibits	\$25.20
Logistics, Processing & Electronic Files	\$25.00
Virtual Services	\$390.00
Smart Summary - Over 100 Transcript Pages	\$99.00

Notes:

Invoice Total: \$4,613.57
 Payment: \$0.00
 Credit: \$0.00
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Balance Due: \$4,613.57

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